SEMI-CENTENNIAL MEETING WILL BE HELD AT SEATTLE JULY 25, 26, 27

AMERICAN BAR ASSOCIATION JOVRNAL

FEBRUARY, 1928

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CURRENT LEGISLATION—CURRENT LEGAL LITERATURE—STATE BAR NEWS

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Bill Abolishes Writs of Error in Federal Courts

ON January 31 President Coolidge signed S. B. 1801 abolishing writs of error in civil and criminal cases in the Federal Courts and substituting the simpler method of appeal. This bill has been approved, though not in its present form, several times by the American Bar Association, and the Committee on Jurisprudence and Law Reform has been insistent on its passage. As the measure is of general interest it is here printed in full:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal.

"Section 2. That in all cases where an appeal may be taken as of right it shall be taken by serving upon the adverse party or his attorney of record, and by filing in the office of the clerk with whom the order appealed from is entered, a written notice to the effect that the appellant appeals from the judgment or order or from a specified part thereof. No petition of appeal or allowance of an appeal shall be required: *Provided, however,* That the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as now provided by law for writs of error to such courts.

"Approved: Jan. 31, 1928."

Seattle Semi-Centennial Committee Appointed

PRESIDENT BRONSON, of the Seattle Bar Association, has appointed the following Executive Committee to have charge of arrangements for the Semi-Centennial Meeting of the American Bar Association to be held in Seattle on July 25, 26 and 27: Glenn J. Fairbrook, Chairman; Loren Grinstead, Vice-Chairman; Elmer E. Todd, Chairman of Finance Committee; Charles H. Winders, Chairman of Transportation Committee; James H. Kane, Chairman of Entertainment Committee; William T. Laube, Chairman of Hotel and Convention Facilities Committee; Othilia G. C. Beals, Chairman of Ladies' Committee; Maurice R. McMicken, Secretary of Executive Committee; Charles T. Donworth, Treasurer of Executive Committee; Ira Bronson and Alfred Battle, Ex-Officio Members of Executive Committee.

Supplements to Canons of Professional Ethics

CHAIRMAN CHARLES A. BOSTON has called a meeting of the Committee on Supplements to Canons of Professional Ethics to be held in the City of New York, on Thursday, Friday and Saturday, March 29, 30 and 31. The Chairman has secured an assignment of a room at the quarters of the Association of the Bar of the City of New York, 42 West 44th street, for those dates, and the coming meeting will be held there. The committee will hear all persons interested in the subject of supplements to the Canons of Professional Ethics who may attend the meeting and desire to present their views. These are invited to appear at 11 A. M. on March 29.

Kansas Judicial Council Makes Report

THE Kansas Judicial Council recently filed its first report with the Governor. It furnishes further evidence of the value of such bodies as aids to the improvement of the administration of justice.

The report contains, among other things, a complete survey of the work done by Kansas District Courts for the year ending July 1, 1927. This shows, according to a statement given to the press by Mr. Charles L. Hunt, of Concordia, a member of the Council, that "while many cases are dismissed before trial by prosecuting officers, . . . only 8 percent of those actually facing trial escape judgments of conviction. There were but 38 hung juries in nearly 3,000 criminal cases disposed of during the year ending July 1, 1927. The report does not include the many hundreds of convictions in Justice, police and city courts, from which no appeal was taken, as the Council has confined its efforts in the past five months to the business of district courts for the year mentioned."

The statement adds the further encouraging fact that "criminals are brought to trial much more promptly than was believed before the survey was made. Of these 26½ per cent were brought to trial within ten days after the information was filed, 19 per cent from ten to thirty days, 24 per cent between thirty days and three months, 15 per cent within three to six months, and only 37 cases were pending over one year."

During the year under survey 2,765 divorce cases were tried and several hundred were dismissed without trial. District courts disposed of nearly 10,000 civil cases, other than divorce, during this period. "More time was consumed in reaching trial in these cases," the statement adds. "The survey shows trial of 3,207 within three months, but this number is accounted for by the large number of suits to quiet title and mortgage foreclosures which are infrequently contested, and disposed of at the first ensuing term of court. 1,320 cases had been pending from 3 to 6 months for disposal, over 800 from 6 months to a year and over 500 had been pending over a year. Many of these trials were delayed on account of the filing of motions and demurrers which were not presented and decided as promptly as the Council thinks might have been. 575 were not filed within 30 days. The greater number were disposed of the same day presented, but decisions in many were withheld from 10 days to a period of over 30 days. The Council has under consideration the recommendation of a court rule whereby courts may be more accessible to dispose of these preliminary procedural matters, and insure a more speedy trial on the merits.

"Some of the present delay is attributal—so it is said—to there being but one judge in many large districts embracing several counties. Concerning this, the report says (referring especially to criminal cases): 'We must be mindful of the fact that a period of perhaps three months elapsing between arrest and trial, is accounted for in many districts in Kansas because of the number of counties embraced in the district and the time necessarily intervening between terms of court in each county.'

"In making the survey of the district courts," we are told, "the Council mailed out about 5,000 open letters to judges, lawyers, newspapermen and other laymen, which embodied new court rules under consideration by the Council, and requested suggestions for improvement in the administration of justice. The rules are still under consideration, and none will be suggested until it becomes ap-

parent they are constructive and will prove helpful. The general idea of the Council is to remove some of the rigidity in court procedure and add elasticity, which seems to have been the course taken in England to avoid delays. A surprisingly large number of replies to the open letter advocate doing away with justice courts, and transferring such business to county courts, of which there are but 13 in the state at present. Suggestions are frequent to shorten the time allowed for an appeal to the Supreme Court, which is now six months.

"The idea of a Judicial Council was started by the Kansas State Bar Association in 1926, was approved by that body in its November, 1926 meeting, and the legislature enacted it into law at the 1927 session. Although the law provided for a minimum of two meetings a year, the Council has found it necessary to meet five times in 1927 to furnish the first report, so it has really accomplished one year's work in five months. Members receive no pay, but expenses are provided for by the Act. However, the appropriation is insufficient to pay expenses. . . . John W. Davis, of Greensburg, and Arthur C. Scates, of Dodge City, are members of the Council by reason of their being Chairmen of the Senate and House Judiciary Committees, respectively. Other members were appointed under the law by Chief Justice Johnston of the Kansas Supreme Court. The entire membership at present consists of the following: Justice W. W. Harvey, Chairman, Topeka, Kansas; Judge J. C. Ruppenthal, Secretary, Russell, Kansas; Judge Edward L. Fischer, Kansas City, Kansas; Charles L. Hunt, Concordia, Kansas; Robert C. Foulston, Wichita, Kansas; C. W. Burch, Salina, Kansas; Chester Stevens, Independence, Kansas; John W. Davis, Greensburg, Kansas; and Arthur C. Scates, Dodge City, Kansas."

ANNOUNCEMENT

A Special Committee on Arrangements and Transportation for the Seattle Meeting has been appointed, consisting of Thomas Francis Howe, Chicago, Ill., Chairman, Allen L. Chickering, San Francisco, Calif., Josiah Marvel, Wilmington, Del., Hugh T. Morrow, Los Angeles, Calif., and Silas H. Strawn, Chicago, Ill. This Committee is arranging for special tour trains to the Seattle Meeting, the preliminary announcement of which will be found elsewhere in this issue.

Selden Society and "Selden's Table Talk"

During 1927 The Selden Society published and distributed to its members a copy of that interesting book, Selden's "Table Talk," based on a specially good MS. belonging to the Honourable Society of Lincoln's Inn, together with Sir. E. Fry's account of Selden, reprinted by permission of the Clarendon Press from the Dictionary of National Biography. Any subscribing member who has not received it should notify the Secretary for the United States of America, Mr. Richard W. Hale, 60 State Street, Boston, Massachusetts.

An arrangement has also been made whereby a number of copies of this book have been placed with Messrs. Goodspeed, Booksellers, 8 Ashburton Place, Boston, and members or non-members who desire additional copies can obtain them in America from that source.

RICHARD W. HALE.

OBLIGATIONS OF THE BAR TO THE STATE AND THE PEOPLE

Necessity of Safeguarding Sound Traditions and Standards of the Profession—Duty to Press for Adoption of Methods of Selecting Judges Which Will Eliminate Political Influence—Stricter Legal Requirements for Admission and More Thorough Inquiry Into Character of Applicants Favored—Bar Should Stand Behind Approved Plans for Improvement of Criminal Justice*

By General John J. Pershing

IN rising to speak to the members of the Nebraska State Bar Association, I must confess to a feeling akin to that of the wanderer who, after visiting many strange lands, has finally returned to the circle of his old time friends.

It is oftentimes gratifying to regard ourselves as creatures of destiny. It serves as a refuge for those who find difficulty in accounting for their deficiencies, and equally as a comfort to those who have assumed the role of smug respectability. But from whatever standpoint we may view the theory of life, there can be no doubt that circumstances have much to do with shaping man's career.

Using my own experience as an illustration, if I had followed my early inclinations somewhat further, I should probably have had the distinction of being an active member of this or of some other bar association. While neither a mere diploma, even from such a renowned institution as the Law College of the State University, nor a certificate of admission to the bar could make one a lawyer, yet both combined might, with some slight stretch of the imagination, be considered as giving me the privilege of addressing you as brethren.

However, I shall not presume to speak to you as a lawyer, but as a layman, who still regards the profession of law with the same respect and with something of the awe which was inspired in his imagination by two very able country lawyers, whom he knew as a boy, and whose influence had much to do with arousing his ambition to rise to their high place in the esteem of the community, and by the same channel. My very pronounced early impressions of the dignity and honor of the profession of law at once became indelible, when, upon admission to the bar, I subscribed to the oath as an officer of the law to support the constitution of the United States and the constitution of the State of Nebraska, and to perform the duties of an attorney-at-law according to the best of my ability.

So it has always seemed to me that a very grave responsibility rested upon the shoulders of the legal profession, and this is the view of people generally. Set apart as trusted officials, the obligation of members of the bar requires that they should recognize the dignity and worth of the individual, whether he be merchant, farmer, banker or laborer, and endeavor to guide and protect him in the enjoyment of the inalienable rights guaranteed him through just and equal laws, justly administered.

The examples of lawyers and jurists of high character and integrity have gone far to preserve the traditions and ideals of the profession. Yet it must be confessed that the sharp practices, and the trickery of a few pettifoggers and shysters, and the venal acts of a few dishonest judges have unfortunately operated to injure the standing of lawyers in general. The degree of disrepute which the fraternity has suffered from these causes has varied at different times, and the failure of such delinquents to maintain correct standards has frequently been noted by writers through the ages.

In the Book of Judges we find it recorded that the men who sat on the bench were not only simple in their manners and dress, modest in their tastes, and free from avarice and ambition, but they were noble and magnanimous men who served without salary, feeling that whatever they did for the state and for the good of the people, by whom they were usually chosen, was above all reward and could not be recompensed. They sought to deserve well of their country, rather than to desire its riches. This exalted patriotism was to some extent of a religious character. And yet, even among such men were found those not altogether without faults.

With reference to lawyers, we find at the beginning of the Christian Era an example of a certain kind of attorney whose counterpart of today can be readily recognized. You will recall the experience our Saviour had with the Scribe who, with show of self-importance and a secret contempt for the Christ, undertook to trip Him by asking a plausible question as to what he should do to attain eternal life. When Jesus said, "What is the law?" the Scribe was familiar with it, and repeated the injunction which ends with "Love thy neighbor as thyself." The Scribe then asked "Who is thy neighbor?" evidently attempting to suggest a limitation to the meaning of the word. Jesus answered by relating the parable of the Good Samaritan, and the lawyer was forced to give the correct reply to his own question. The lesson taught us by that parable is as applicable now as it was nineteen hundred years ago.

The large proportion of our jurists of the present day are high-minded, incorruptible patriots, like those of old, who toil for a pittance in the service of their country, proud of the honor, jealous of the dignity and respect which is their due. A smaller number, often selected by local political groups or party bosses, are too easily swayed by self-interest or prejudice. But it is unnecessary to discuss further these blots on the escutcheon of the legal fraternity. The national bar association fully realizes the urgency of pressing for the adoption of such methods in the choice of judges as will insure the elimination of political influence. No body

*Address delivered at the Annual Banquet of the Nebraska Bar Association at the meeting held at Omaha on Dec. 28 and 29, 1927.

of men is better qualified to control the selection of candidates for the bench than the lawyers themselves. But if the members of the bar fail to strive for purity, that high standard which alone will inspire full confidence in the integrity of the bench is not likely to be attained.

Still we have much, very much, to be proud of. When we recall the long line of decisions handed down by our judges, beginning with the immortal John Marshall and embracing those both on the Federal and State bench who have followed after him, and when we realize that their opinions have interpreted for us the laws under which we live, we may well indulge the belief that the examples of such men will help eventually to establish our judiciary on a plane where it will be without fear and without reproach.

Yet I think we should go deeper and endeavor to improve the general qualifications of the bar from among whom the selection of judges is made. Stricter legal requirements, a more thorough inquiry into the character of applicants for admission, and a closer examination regarding their conception of the obligations of the lawyer, are clearly indicated. The preparation of the lawyer, if he is to be of the greatest service to society, should extend beyond mere study to become a practitioner. He is called upon and expected to do many things beyond acting as technical expert on matters of litigation. He may and should assist in preventing resort to the courts by suggesting proper legal devices in organization. He frequently acts as counsel in the formation of business policies not entirely legal in character. He is called upon to advise clients on questions of a personal nature. As executives, legislators, commissioners, diplomats, and so on, lawyers become leaders in the political life of the state and nation. Bearing all these possibilities in mind, the inadequacy of the training now offered in our law schools is very evident.

One reason why the profession is regarded as set apart by law as a group of sworn public servants is the general need of trained and trustworthy men to whom the citizen may entrust his affairs in order to obtain justice. If the bar is to maintain this elevated position and hold the confidence of the people, it must safeguard sound traditions and standards. After all, the highest reward that can come to any man is the approval of his acts by those who have the character, the ability, and the wisdom to appraise them, but whether law abiding or otherwise, no one is quicker to recognize justice and uprightness in the lawyer and the judge than the average American citizen.

Probably the most severe criticism involving lawyers and judges is aimed at the frequent delays in the prosecution of persons charged with crime. If the offense is slightly out of the ordinary, the press carries red headlines, heralding accounts of the hunt for the criminal, possibly his arrest, then his incarceration and arraignment. The details of the selection of jurymen, supposedly ignorant of the case, and more than likely ignorant of everything else, are next given to the public. Then follow reports of the trial, as it proceeds, including the examination of witnesses, usually before a packed courtroom, and the clash of lawyers over questions of evidence often to the confusion of both judge and jury. All this has become a species of indoor sport that attracts the curious, the embryo criminal lawyer, and the maudlin sentimentalist, who would make a hero of the criminal. In the end perhaps delay is granted, or there is a mistrial, or the case is appealed, and often because of some technicality it is finally dismissed. All these things tend to bring justice into disrepute. The average man, unfamiliar with the law and legal procedure, and likewise ignorant of technicalities and precedents, blames both lawyers and courts and feels that some undue influence must have been used to forestall justice. Thus the trial, instead of being a deterrent to the criminal, becomes by its endless delays an actual encouragement to lawlessness.

Of course, most members of the bar deplore this state of things, and would like to see our faulty code of procedure revised. Chief Justice Taft, in speaking on this subject recently, said: "We must not allow our interest in criminals to go to the point of making effective prosecution of crime and its punishment subordinate to schemes for reform of criminals." "We need legislation," he said, "to secure prompter information or indictment or prompter trial to reduce as much as possible the opportunities for attorneys of convicted men to delay a review and final disposition of cases. We need legislation that shall render impossible new trials except for injustice in a trial." He remarked further, "We need legislation to enlarge the power of judges to guide the trial and to help the jury in understanding the evidence, and in reaching its conclusions on the evidence. This means that the law should not prevent the charge of the jury from being enlightening and clarifying. It should obviate the camouflage that is often created in the courtroom by the skill and histrionic ability of the counsel. We must trust somebody in the supervision of the trial, and that somebody should be the judge. The procedure and rules of evidence should not be such that the lawyer can weave a web to trip the trial judge, which an upper court by reason of technical rules would have to set aside. Neither the English judges nor the judges of the Federal court are restricted in the aid which they can give the jury to enable it to understand the real issues and to weigh evidence intelligently. But judges are more restricted in other courts. The truth is that the American people in many States have distrusted the judges and preferred to let the juries wander about through a wilderness of evidence without judicial suggestion or guide and often to become subject to an unfair and perverted presentation by counsel of the evidence, leading to a defeat of justice."

Speaking of juries, he says: "The method of selection ought not to be such that counsel for the defendants by exclusion of worthy citizens from the panel can choose jurors of weak intelligence, of little experience and subject to emotions easily aroused. Exemptions from jury service ought to be cut down and society ought to be able to secure a jury that approaches the issues with a sense of its obligation to enforce the law without fear or favor and with intelligence enough to learn from the judge what the law is and to weigh the evidence with reference to its violation."

Here then is another obligation that falls particularly on the legal fraternity. The plain duty of the profession is to follow this advice of the distinguished Chief Justice and wherever possible in their capacity as legislators, proceed to apply the necessary remedy in the premises. Behind them should stand the entire bar.

It is said that the standard among lawyers is in a direct ratio to the average of good citizenship in the community.

This points again to an obligation on the part of the legal profession. At present, the mental attitude of a large proportion of our people toward law is fundamentally a serious obstacle in the way of an effective and efficient administration of justice. The people are

lax in their attitude toward the enforcement of law and order, partly due, no doubt, as has been pointed out, to the frequent miscarriage of justice. At any rate, there is generally a growing disregard of the obligations of citizenship or else a failure on the part of the people to appreciate that they are responsible partners in our system of government. They forget or else they are ignorant of their responsibilities under the constitution.

In proportion to population we have forty times as many murders, for instance, as our northern neighbors, twenty times as many as Germany, and ten times as many as England, mainly because we do not enforce the laws. In 1925 the murder rate reached the appalling number of one to every 9,000 population, or about one-eighth as many murders in one year as we lost in battle during the World War. An actual reign of terror breaks out at frequent intervals in some part of the country from which neither rural districts nor thickly populated centers seem able to escape. The trouble is that there is a careless and listless attitude among our whole people toward both law and government.

The crux of this whole question that we have been discussing this evening lies in bringing both old and young to the full realization of their obligations as citizens. Primarily the people in a government like ours are to blame, of course. But when we consider that over forty-four per cent of the children leave school as soon as the law permits them to work, that only a little over ten per cent graduate from high school, and that only one and four-tenths per cent graduate from college, it is evident that ignorance is largely the cause. The remedy, at least insofar as it concerns coming generations, suggests itself. If we can teach our citizens generally, beginning with the children, to understand that each one is a responsible element of this government, the standards of citizenship will be improved, the administration of justice will be less difficult, and crime less prevalent.

The bar as an organization is fully alive to its responsibilities in this regard. The American Bar Association has created a standing committee on citizenship, the Chairman of which, the Honorable F. Dumont Smith of Kansas, was one of your distinguished speakers today. The Nebraska State Bar Association has appointed a similar committee. One of the important objectives aimed at is to have the Constitution of the United States, and the duties of citizenship, taught as a separate subject in all the schools of the nation. This effort of the bar should not be permitted to languish but should be followed up earnestly and persistently.

Generally speaking, members of the bar have unusual opportunities to serve the country by helping to educate the people in their duties under our system of government. The lawyers' role should not be limited to the narrow pursuit of his profession, but through daily contacts should embrace that larger field.

To conclude, if the individual citizen does not come to let his voice be heard among his fellows, or does not come to give expression at the polls to his convictions as a loyal citizen, he is unworthy of his high estate. Mere perfunctory voting in response to appeals or to a passing interest in public affairs is not sufficient. Votes cast without understanding and without thoughtful consideration are likely to be destructive. The unintelligent exercise of the right of suffrage is worse than none. Good government can be assured only by the intelligent action of every patriotic citizen.

DEPARTMENT OF CURRENT LEGISLATION

Punishment for Crime—Continued

BY JOSEPH P. CHAMBERLAIN

Specific Crimes

THERE are no new crimes under the sun of criminal justice, but new expressions of original sin occasionally crop up to urge the legislature to activity. Fraud is ancient, but gasoline stations are new. Apparently northwestern gas dealers have been applying the principle of "just as good" to their business dealings by labeling containers with trade names or other designations which are not those properly belonging to the fluid content. Oil companies and consumers faithful to a particular brand, were both deceived to their detriment. Of course suits for damages, injunctions and the whole broadside of the civil courts could be opened on the offenders, but the legislature judged that the heavy guns of criminal justice must be brought into play, and in Washington, by chapter 222, they ordained that it was a misdemeanor, and on second offense a gross misdemeanor, to deceitfully mark barrels of gasoline or oil or to sell these volatile or lubricating liquids as of a quality or grade not in accord with the fact, or as made by another than their real manufacturers. In North Carolina, chapter 174 goes a step further but only applies the rule to lubricating oil. The Tarheel conscience is not satisfied with punishing silent fraud; it requires that a sign "No Brand" or the name of the brand dispensed be posted near the outlet of the container, and makes it a crime to substitute another oil unless the customer consents. Furthermore, for each offense against the act, the seller forfeits $100 to the manufacturer whose trade name he has taken in vain, to be gained by suit.

The California statute already mentioned making it theft to defraud a person of his labor, is the most interesting case of a novel specific application

of criminal law on a broad scale, but two other instances will serve as examples of the growing bulk of itemized crime. The automobile, that great accelerator of the legislative machine, is chiefly the cause. North Carolina, chapter 61, punishes those who wilfully injure horses or mules or vehicles which they have hired, or who subrent them without consent, or who trick the owner into giving them possession under contract of hire without intending to pay. Again that gentle lady, the civil law, is powerless if the defendant has no property, and the sterner action of her sister, the criminal law, will be needed to impose respect for other's property on those persons who have not the substance on which alone the civil courts can act. Maryland, chapter 533, is of the same type, only a little more detailed.

A useful device to prove ownership of stolen goods is the serial number which is being commonly stamped on manufactured articles. To protect this evidence, it is becoming usual to punish altering or removing the number. Automobile and pistol legislation embodying the principle is usual, and it is being extended to other articles. California, by chapter 324, applied it to a long list, including radios, pianos, and vacuum cleaners. As the act prohibits buying, possessing or selling articles on which the number has been altered or removed, it will be of aid to the police in the war on receivers of stolen goods or "fences" which has been begun as a means of stopping theft. If a check is kept of the number of articles in stock or shipped to a dealer, notice can be given if any of the articles are stolen, and then if one is found in the possession of another person, he must explain how it reached him. Evidently it was an advantage to obliterate the number but if it is a crime to have a machine in one's possession with a number tampered with, this advantage of the thief will be neutralized. It is interesting to notice that the articles enumerated are those commonly sold on installment payments. It will evidently be important to the vendor that the number be not altered so that he can easily prove his ownership of a particular article on which installments are due, if he finds it in the possession of another person than the vendee.

Both Texas and Michigan change the definition of murder. Michigan in her Code provides that it is sufficient to charge that defendant "did murder the deceased" so omitting the former requirement that the "defendant did wilfully and with malice aforethought kill and murder the deceased." Texas, chapter 274, abolishes the crime of manslaughter and sets up the single crime of murder, which is the "voluntary" killing of a person. Formerly "malice aforethought" was an essential element of the crime. The idea of malice is brought in by requiring the court in a case to define it and apply it "by appropriate charge to the facts in the case," and must instruct the jury that unless it finds malice, the punishment cannot be more than five years imprisonment. Thus in the indictment or information, the prosecution need only charge voluntary murder, and the degree of the crime will be developed from the evidence.

California, chapter 619, simplifies its crime lexicon by striking from it the word larceny, and by consolidating under the word "theft" what used to be larceny, embezzlement or fraudulently depriving another of property, credit, or labor. The test of the value of property shall be the fair market price, and of service, the contract price or "the reasonable and going wage." Stealing a person's services is thus put on the same footing as stealing his property; in either case it is theft and punished in the same way corresponding with the value feloniously acquired, unless a special punishment is edicted. Such is the case where an automobile is stolen, which is grand theft regardless of value.

In the law of arson in several states, a notable change expressly includes in the crime aiding, counseling or procuring the felonious burning.[1] An old crime in a new dress is specifically punished in Illinois, page 406. Any person who shall falsely utter or publish over the radio words which "in their common acceptation shall tend to blacken the memory of one who is dead, or impeach the honesty, integrity, virtue or reputation, or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or financial injury" shall be guilty of slander and be fined not over $100. Truth is, however, a sufficient defense. Another case of adjusting criminal law to advances in the application of science to every day life is Maine, chapter 215, which makes it unlawful to use any radio receiving set which radiates waves between 200 or 550 meters wave length thereby causing interference with reception of any other radio receiving set.

Indiana, chapter 158, creates a new subdivision of robbery, bank robbery, which is punished by prison from ten years to life. The crime is either an attempt to break into a bank vault or intimidating a person to make him divulge the way a bank may be entered, or by injury or threat of a person to render a theft from a bank easier. Whether the robber succeeds or not, he is liable to the same punishment. The general interest in punishing the crime of perjury makes Wisconsin. chapter 414, noticeable. The act provides that whenever it shall appear to any court of record that any witness or party has testified so as to induce a reasonable presumption of perjury, the court may order his arrest stating in the order the grounds or reasons for the arrest, and such order shall stand and be taken as a criminal complaint for perjury upon which the clerk of the court shall issue a criminal warrent. Notice of proceedings shall be given to the district attorney. The accused shall be brought before the judge issuing the order for a preliminary examination. Therefore procedure shall be as in other criminal cases.

Trials

California and Michigan, in its new Code of Criminal Procedure, No. 175, undertake to lessen the danger of defeat of justice by technical defects in the indictment or information. California, chapter 613, makes the indictment or information easier by no longer requiring the exact date of an offense to be charged but permitting a charge that the act was committed on or about a certain date and a simple statement of the crime, as, the defendant "murdered C. D." in place of requiring that it be set forth "in ordinary and concise language" as was the case under a provision repealed by chapter 610. Michigan, too, provides a simple form of indictment, but allows the defendant to require a bill of

1. R. I. ch. 1043; Ind. ch. 44; Nev. ch. 146; N. H. ch. 96; Wash. ch. 265; N. C. ch. 11.

particulars. The same state compels defects in indictments in form or substance to be objected to specifically and prior to trial or subsequently only as the court may permit. If an amendment be made, the defendant may have the jury discharged or get a continuance unless it "clearly appear that he has not been misled or prejudiced, and that his rights will be protected" by going to trial. If the jury is discharged, he will not have been put in jeopardy and may be put on trial anew. An indictment cannot be set aside for misjoinder of parties or offense, or for uncertainty. The court may remedy the defects or permit amendment to make the indictment more certain. Michigan also allows joint defendants to be tried jointly or separately in the discretion of the court and rejects the right of either accused to demand a separate trial. The defendant must show his hand before trial in Michigan if he intends to claim an alibi or insanity. Four days before trial he must notify the district attorney of his intention and, in case of an alibi, give specific information as to where he claims to have been. If he fails to give notice the court may exclude evidence to establish either defense. California, chapter 677, has an interesting answer to the problem of the defense of insanity. The defendant is first tried as if he were sane, then, if he is found guilty, the fact of his sanity is tried either before the same or another jury "in the discretion of the court." If the verdict be that he was sane he is sentenced, if insane, then the court sentences him to the hospital for the criminal insane unless the court finds that he has recovered his sanity, when he is to be held till this sanity has been determined in the manner fixed by law. If he goes to the hospital he can be discharged if the court by which he was sentenced, or of the county in which he is detained, finds that he has recovered his sanity. No application for such determination can be made until he has been confined for a year. Chapter 675, strikes out of the Code the clause permitting a verdict of "not guilty by reason of insanity" thus completing the modification of the system.

An interesting way of simplifying trials is the Michigan change in an old rule of evidence. Within the discretion of the court, no question asked of a witness is objectionable solely because it is leading. The Michigan Code furthermore allows an indictment or information for manslaughter to contain a count for procuring or attempting to procure an abortion and authorizes the jury to convict of either offense. So that if the evidence of one offense fails to convince the jury they can fall back on the other charge. Dying declarations are admissible to convict of either offense.

To assure the check of publicity on the action of the prosecuting officers, New York, chapter 596, and Minnesota, chapter 296, require that on dismissal the indictment must be filed as a public record with the prosecutor's stated reasons for urging dismissal. The same rule applies in Minnesota, chapter 255, to the case where the defendant is allowed to plead guilty to a lesser degree of offense than that with which charged. In New York, chapter 327, the court is required to investigate the record of the prisoner before sentence, and in California, chapter 620, on the defendant's appeal, the state can have the court pass on rulings adverse to the state at the trial thus permitting the law to be settled on doubtful points.

Juries

The tendency to emphasize the right of the public is very evident in Michigan, No. 175, which gives the state as many challenges as the defendant, five apiece. Where there are joint defendants each has his five challenges and the state as many as all defendants together. This equality does not apply where the defendant may be sentenced to death or life imprisonment, but his challenges in such cases are reduced from thirty to twenty, while the state keeps the fifteen to which it was always entitled. To make a mistrial less likely, the same statute increases the allowance for extra jurors from one to two so that a jury of fourteen is impaneled, all of whom hear the case. If more than twelve remain after the charge of the court, then twelve are drawn by lot to find the verdict. New York, by chapter 265, obviously desires to prevent the lengthening of prison term, perhaps with the mandatory sentence for recidivists in mind, from influencing the jury in deciding the facts, by requiring the court to state to the jury that it must not consider the punishment. California by a new clause in chapter 601, gives the court power to modify a judgment where the evidence shows that the defendant was guilty of a crime less in degree than that charged but included in it, without a new trial, and this power extends to any appeal court.

In California, chapter 634, the judge may read the section in the Code on presumption of innocence, thus avoiding the chance of error in his charge so far as this point is concerned. A defective special verdict is not a basis for a new trial, chapter 602; the court must send the jury out to redeliberate and the trial or appellate court may modify the judgment if the facts show guilt of an offense of lesser degree than that charged. Extending the usual function of a jury, Georgia, page 317, directs juries in City Courts in their verdicts in criminal cases involving misdemeanors to fix the punishment within the limits prescribed for misdemeanors, but if there is a plea of guilty the judge shall fix the punishment.

Aliens

The states are urging on the federal immigration authorities in their duty of deporting criminals, by requiring state officials to give information to the proper Federal officers in respect to aliens who fall afoul of the law and bring up in state courts. The legislature of Maine adopted as the first chapter of its session laws for 1927, an order to the clerk of a court to inform the immigration authorities whenever an alien is convicted of any offense in his court. Custodial officers are also required to give a like notice whenever they find an alien in the institution under their management. The lawmakers in Oregon, by chapter 266, do their best to get rid of undesirable aliens by the agency of the United States. They made it the duty of the official in charge of any state or county penal institution, to inquire into the nationality of every one of his prisoners. If he discovers any foreigners among them, he is charged to notify to the immigration officer of the district, the date, cause of conviction and length of term of that foreigner, and in addition his nationality, the date on which and port of entry at which he last entered the United States.

If the immigration officer so requests, the clerk of the court in which the alien was convicted, must furnish to him without charge, a certified copy of the complaint, judgment and sentence and any other record pertaining to the case.

The drive against the armed criminal is marked by sections in the pistol law of New Jersey, chapter 321, Rhode Island, chapter 1052, and Oregon, chapter 266, expressly requiring that this step be taken in the case of persons convicted of offenses when armed with a deadly weapon.

Laws of Pennsylvania, Florida and Georgia

Since beginning publication of these articles on criminal law, the session laws of Pennsylvania, Florida and Georgia have become available. They contain a few noteworthy statutes in the criminal field. Pennsylvania by No. 270, authorizes all police officers, state and local, to take fingerprints and photographs of persons accused of crime or believed to be fugitives from justice. These identification marks are sent daily to the State Police headquarters for comparison with records on file there and the arresting officer notified of any criminal record revealed in a particular case. Extending the hunt so that it will be not state but nation wide is the object of a clause making it the duty of the state police to cooperate with other states. Confidence in fingerprint evidence appears in a section authorizing district attorneys to engage fingerprint experts for testimony at trials and to keep files of prints of all persons convicted. He must destroy prints of persons acquitted. He may not take prints of persons accused of misdemeanor unless he believes them old offenders. Pennsylvania falls into line with the states which are shortening time of trial. No. 464 cuts the delay for criminal appeal from three months to forty-five days, and this is more significant since the parole was cut in 1925 from six to three months.

Georgia, page 272, devises a new way of bringing to the authorities evidence of a certain social crime, by making it the duty of the State Registrar of Vital Statistics to report to the attorney general the birth of a legitimate child of parents, one of whom is white, one colored. The attorney general must then initiate a prosecution of the parents under the statute which makes the parties to such a marriage, felons. This use of vital statistics is not of a nature to encourage reporting of such births; migration of expectant mothers to other states with less strict notions will probably result to the impairment of Cracker statistics. The question may also be raised whether a husband or wife in such a case can be forced to make a statement of race in the birth certificate, if that statement is to be at once used as the basis of a criminal action. Even if the declaration itself cannot be used in court, the attorney general must initiate an investigation, using it as a basis. The declaration fully establishes the crime, and, therefore, will go further than the statement in a bootlegger's income tax return which the Supreme Court decided he must make against his plea of self-incrimination,[2] over ruling the decision of the Circuit Court of Appeals.[3]

Florida illustrates many of the tendencies shown by the statutes referred to. Recidivists have a special measure of severity meted out to them by chapter 12022. Fourth offenders must be given life sentence, second offenders not less than the longest nor more than twice the longest term for the offense of which they are charged. The customary provision appears that an offender may be sentenced as a recidivist either after or before his conviction for the principal crime, that is, he may be resentenced as a recidivist after his conviction and sentence as a first offender. Robbery while armed with a dangerous weapon, with the intent, if resisted, to kill or maim the person robbed, shall by chapter 12246, be punished by imprisonment "for a term of years or for life," in the discretion of the court. Formerly the maximum was twenty years. Probably a presumption of intent in case of robbery with a deadly weapon will follow in due course if Forida jurymen are not wiling to find intent when the robber points his pistol at the victim. The tendency to equalize state and defendant in jury trials crops up in chapter 12067, which gives each defendant in a capital case ten peremptory challenges and the state ten for each defendant. In other felonies the figure is five, and in misdemeanors, three. Formerly the state had no increase in the number of challenges where there were several defendants tried jointly. Progress in promptness of trial of criminal cases should be gained by chapter 11975, which sets up in certain counties a court of crimes to have concurrent original jurisdiction with the criminal court of record over misdemeanor cases.

Students of the problem of what is intoxication will be interested in chapter 11809. Before 1927 driving an automobile "when intoxicated" was a misdemeanor, so permitting the courts to find whether in a particular case the accused fell within the broad scope of the word, which the Volstead act, it was hoped, would banish from the lexicon of American law. The lawmakers evidently thought that judges and juries could not cope with the difficulty arising from the application of so wide a discretion, and last year helped them out by striking out the expression "intoxicated" and substituting that the accused person must be "under the influence of liquor to such an extent as to deprive him of the exercise of his normal faculties." Arson, chapter 11812, is made more technical and inclusive, but the maximum term is lowered from life to twenty years. In a startling statute, chapter 12257, the legislature adopts the provisions of the opinion of the Supreme Court of the United States in case of Carroll v. United States, 267 U. S. 132, relating to Searches and Seizures of Vehicles carrying contraband or illegal liquor, etc.

2. U. S. v. Sullivan, 47 S. C. R. 607, decided May 16, 1927.
3. Sullivan v. U. S., 15 Fed. 2nd Series, 809.

Signed Articles

As one object of the American Bar Association Journal is to afford a forum for the free expression of members of the bar on matters of importance, and as the widest range of opinion is necessary in order that different aspects of such matters may be presented, the editors of this Journal assume no responsibility for the opinions in signed articles, except to the extent of expressing the view, by the fact of publication, that the subject treated is one which merits attention.

A RETURN TO STARE DECISIS

We Are Well on Our Way Toward a Shift from Following Decisions to Following Principles and This Shift Has Far-Reaching and Important Consequences for Art of Judicial Government and Science of Law—First Meaning of Stare Decisis—How Retreat Began and What Was Lost By It in Fields of Government and Legal Scholarship—How to Regain Lost Ground*

By Herman Oliphant

Professor of Law, Columbia University; President, 1927, Association of American Law Schools

Introduction

THE practice of those who have preceded me at this post and your tolerance as auditors seem to have fastened upon you the annual duty of listening, with such patience as you can command, to some remarks by the president. Thus entrenched, I speak.

A study of former presidential addresses discloses among many more important things, the interesting fact that the lot of them is divided, Gallic fashion, into three parts; those addresses which point with pride, those which view with alarm, and those offering a certain salvation.

And future presidents of this Association may well again and again point with pride to its accomplishment in the improvement of legal education and the elevation of the quality of the bar. The progress made has been substantial. Repeated reviews of it cannot minimize its extent. They are always a source of zeal for new effort and at times a merited comfort when plans fail.

Presidential addresses which have viewed with alarm have been numerous and this for the encouraging reason that members of the Association have been constantly restive under the short-comings they have found in law schools and law practice, an impatience with short-comings motivating such progress as we have already made. The present faults in our work, corrected tomorrow, will be followed by those of another day considered equally grave. We may as confidently expect as we do earnestly hope that critics shall be with us, perennial as the poor.

Plans for improvement in legal education, varying widely in ambition and utility, have been laid before you in presidential addresses of the past. More are to come. The innovation of today becomes the anachronism of tomorrow and the end is not yet.

This part which you have given me the honor to play in this performance seems to admit of no other lines. You are doomed to be praised, scolded, or advised, world without end. All this being so, it is not easy to find in the fields of the immediate interests of this group unthreshed straw which promises much grain. Hence I venture to look a bit more widely.

A number of current happenings show that some very fundamental changes in things legal may be in the making. Renewed popular criticisms of the law and its administration, the multiplication of legislation, the truly impressive movement to restate the law, and reports of experiments in legal education suggest at least the possibility that these and other things are merely the minor movements of parts of a whole army on the march. If so, it is worth while to neglect for a moment matters of tactics in legal education and to consider some phase of the broad strategy which may be shaping all of these movements seemingly so diverse. Let me anticipate criticism for attempting anything so ambitious by reminding you that it is at least the privilege though not the duty of any petty officer concerned with such prosy business as finding billets for a company to speculate at times about the possible plans and purposes of headquarters.

This Association of law teachers, students, and writers, as a group, occupies a position more potent in determining the future trend of legal thought than that of any other like number of persons in the country. As the teachers of future lawyers and judges, the potency of our present position, among the factors which can alter men's thinking and action on legal matters, is outstanding. But it is as those who are training the law teachers of tomorrow that we are the responsible part of a circle most vicious in perpetuating and multiplying the vices in our present thinking or most beneficent in propagating its virtues. The long hoped for day when the better law schools should have their say in fixing the direction of the law's advance is come. A misplaced modesty at the present time might easily conceal from us a part of the opportunity which this affords and much of the responsibility which it entails.

That the law schools have come into this new estate is shown by many events. It will suffice to mention but a few. There is an increased frequency of reference in judicial opinions to the treatises written by law teachers and to our law review literature. The personnel chosen to draft our uniform state legislation and to formulate the law's restatement together with the reception which both of these projects are receiving at the hands of the bench, the bar and the public, is most significant. Current progress in the effort to raise the standards for admission to the bar advances a project at which the law schools of this Association have long labored and marks an increasing acceptance of the ideals for which they have stood. These are not formal matters. They mark a change of substance in our relations to the profession and to the public and as yet we have no adequate measure of the extent and potentialities of this change.

Thesis Stated

Our part in shaping the future of legal scholarship thus recognized makes this an appropriate time and gathering to consider what seems to be a most profound change which has been slowly and imperceptibly creep-

*Presidential Address delivered at Annual Meeting of Association of American Law Schools held at Chicago, December 29, 30 and 31, 1927.

ing into our treatment of problems in Anglo-American law, a fundamental change which merits careful study in order that we may recognize its presence, measure its extent, and judge its consequences. Let me anticipate my conclusions by asserting that we are well on our way toward a shift from following decisions to following so-called principles, from *stare decisis* to what I shall call *stare dictis;* by saying that this shift has far-reaching and unfortunate consequence for both the art of judicial government and the science of law and by proposing a return toward the ancient doctrine of *stare decisis.*

Stare Decisis Analyzed

Support for this position will be found by examining that doctrine. It asserts not one thing, but two. For one thing, it asserts that prior decisions are to be followed, not disregarded. But it also asserts that we are to follow the prior decisions and not something else.

The First Meaning of the Doctrine

Most discussions of the doctrine of *stare decisis* have emphasized the first of these two assertions. In those we are told of the advantages and disadvantages of the doctrine. It has been pointed out how, on the one hand, it makes the law applicable to future transactions certain and the future decisions of judges predictable; and again, how it gives us justice according to law and not according to the whims of men. On the other hand, it has been shown that to follow it gives us a measure of inflexibility in our law resisting changes needed to meet changing conditions. We are all familiar with these and other broad implications of this branch of the doctrine and have considered the necessary choice between conflicting advantages which its acceptance or rejection involves. The vigor of this branch of the ancient doctrine has been weakened but little. Something in the cases is being followed. This whole aspect of the matter is mentioned here only to be set to one side.

The Second Meaning of the Doctrine

The drift in our methods of dealing with legal problems which is upon us and is the subject of this discussion, concerns more intimately the second branch of the rule dealing with what it is in prior decisions which is to be followed. It is to be carefully noted that, when *stare decisis* is hereinafter mentioned, only this branch of the doctrine is referred to. It is in this quarter that innovation has been at work and is carrying us farther and farther toward treating this ancient doctrine as if it were *stare dictis* instead of *stare decisis.*

There seems to have been little critical study of this phase of the doctrine,—of just what it is in prior decisions which is to be followed. General statements that the decision is to be looked for, that dicta are of slight weight and offer no certain guide can be turned to at many places in the books and are familiar to all. Students beginning their law study are told these things in a general way and then are left to an apprenticeship among the cases to discover largely for themselves their fuller meaning. Yet this matter is the one most vital and difficult factor conditioning the soundness of their scholarship. It is because the word *decision* may mean any one of many things that it is perilous to leave the matter thus unarticulated.

What Does a Case Decide?

In the first place, a court, in deciding a case, may throw out a statement as to how it would decide some other case. Now if that statement is a statement of another case which is as narrow and specific as the actual case before the court, it is easily recognized as dictum and given its proper weight as such. In the second place the court may throw out a broader statement, covering a whole group of cases. But so long as that statement does not cover the case before the court, it is readily recognized as being not a decision, much less the decision of the case. It is dictum, so labeled and appraised. But in the third place, a court may make a statement broad enough to dispose of the case in hand as well as to cover also a few or many other states of fact. Statements of this third sort may cover a number of fact situations ranging from one other to legion. Such a statement is sometimes called the *decision* of the case. Thereby the whole ambiguity of that word is introduced and the whole difficulty presented.

If a more careful usage limits the word *decision* to the *action* taken by the court in the specific case before, it, *i. e.,* to the naked judgment or order entered, the difficulty is not met; it is merely shifted. *Stare decisis* thus understood becomes useless for no decision in that limited sense can ever be followed. No identical case can arise. All other cases will differ in some circumstance,—in time, if in no other, and most of them will have differences which are not trivial. *Decision* in the sense meant in *stare decisis* must, therefore, refer to a proposition of law covering a group of fact situations of a group as a minimum, the fact situation of the instant case and at least one other.

To bring together into one class even this minimum of two fact situations however similar they may be, always has required and always will require[1] an abstraction. If Paul and Peter are to be thought of together at all, they must both be apostles or be thought of as having some other attribute in common. Classification is abstraction. An element or elements common to the two fact situations put into one class must be drawn out from each to become the content of the category and the subject of the proposition of law which is thus applied to the two cases.

But such a grouping may include multitudes of fact situations so long as a single attribute common to them all can be found. Between these two extremes lies a gradation of groups of fact situations each with its corresponding proposition of law, ranging from a grouping subtending but two situations to those covering hosts of them. This series of groupings of fact situations gives us a parallel series of corresponding propositions of law, each more and more generalized as we recede farther and farther from the instant state of facts and include more and more fact situations in the successive groupings. It is a mounting and widening structure, each proposition including all that has gone before and becoming more general by embracing new states of fact. For example, A's father induces her not to marry B as she promised to do. On a holding that the father is not liable to B for so doing, a gradation of widening propositions can be built, a very few of which are:

1. Fathers are privileged to induce daughters to break promises to marry.
2. Parents are so privileged.
3. Parents are so privileged as to both daughters and sons.

1. This needs emphasis to avoid any impression that abstractions and generalizations are thought to have no useful part to play. They are always and everywhere indispensable.

4. All persons are so privileged as to promises to marry.

5. Parents are so privileged as to all promises made by their children.

6. All persons are so privileged as to all promises made by anyone.

There can be erected upon the action taken by a court in any case such a gradation of generalizations and this is commonly done in the opinion. Sometimes it is built up to dizzy heights by the court itself and at times, by law teacher and writers, it is reared to those lofty summits of the absolute and the infinite.

Where on that gradation of propositions are we to take our stand and say "This proposition is the decision of this case within the meaning of the doctrine of *stare decisis?*" Can a proposition of law of this third type ever become so broad that, as to any of the cases it would cover, it is mere dictum?

A Question of Double Difficulty

That would be difficult enough if it ended there. But just as one and the same apple can be thrown into any one of many groups of barrels according to its size, color, shape, etc., so also there stretches up and away from every single case in the books, not one possible gradation of widening generalizations, but many. Multitudes of radii shoot out from it, each pair enclosing one of an indefinite number of these gradations of broader and broader generalizations. For example, a contract for wages contains a stipulation that it shall be non-assignable by the employee. A court holds that the laborer can assign any way and that his assignee can sue the employer for the wages regardless of the stipulation. This holding can serve as the apex of many triangles of generalizations. At the base of one will be a broad generalization treating the claim as property and asserting the alienability of property; at the base of another will be an equally broad generalization having to do with contractual stipulations opposed to public policy and the base of a third will be similarly wide generalization concerning the liquidation of claims in the labor market. Others could be enumerated and other cases similarly analyzed. That is not needed, for we all know of at least one case appearing in the casebooks of more than one subject upon which securely rests more than one inverted pyramid of favorite theory.

A student is told to seek the "doctrine" or "principle" of a case, but which of its welter of stairs shall he ascend and how high up shall he go? Is there some one step on some one stair which is *the* decision of the case within the meaning of the mandate *stare decisis?* That is the double difficulty. Each precedent considered by a judge and each case studied by a student rests at the center of a vast and empty stadium. The angle and distance from which that case is to be viewed involves the choice of a seat. Which shall be chosen? Neither judge nor student can escape the fact that he can and must choose. To realize how wide the possibilities and significant the consequences of that choice are is elementary to an understanding of *stare decisis.* To ask whether there exists a coercion of some logic to make that choice either inevitable or beneficent, searches the significance of *stare decisis* in judicial government and the soundness of scholarship in law. This question is real and insistent. It is one which should be asked explicitly and faced squarely.

An attempt to answer this question will be made later. When an answer is looked for, it will be well to consider whether the answer must of necessity be a statement. There may be some gratuity in assuming that the answers to all questions are inevitably so. The answer to some questions, including this one, may be, not a statement, but an attitude, a matter not of affirmation but of method. If our attitude on this question be that of approximating the experimentalism of an earlier *stare decisis,* and if our method of dealing with cases be one of increasing objectivity and precision, such may well constitute a full answer for us in our work here and now, both as students and judges. It has been pointed out that one can embrace skeptical empiricism as a method of work without embracing it as a philosophy of life.

What Stare Decisis Once Meant

But to support the assertion that there is a drift both marked and unfortunate away from the ancient doctrine of *stare decisis,* it is not needed at this time to attempt a full answer to the question as to the angle and distance of the view of a precedent. It is enough to find out from what angles and at what distances courts and students formerly viewed a precedent as compared with the angle and remoteness of our present points of view.

In earlier English law there were many writs, each writ having many forms and each form being quite specific. Each would cover only a relatively few human situations and those so covered were relatively well defined. Recall such random examples as *de homine replegiando, rationabilibus estoveriis,* and *parco fracto* out of scores which could be mentioned. Contrast such actions as these with that of trover in its later stages. The old actions divided and minutely subdivided the transaction of life for legal treatment. Speaking of the place occupied by trespass in a Register of Writs belonging to the 14th century when the scheme of writs was about fully developed and required some hundreds of large pages when later printed, Maitland says: "There has been (up to this time) no generalization; the imaginary defendant is charged in different precedents with every kind of unlawful force, with the breach of every imaginable boundary, with the asportation of all that is asportable, while the new well-known writs against the shoeing smith who lames the horse, the hirer who rides the horse to death, the unskilled surgeon, the careless innkeeper creep in slowly amid the writs which describe wilful and malicious mischief, how a cat was put into a dove-cote, how a rural dean was made to ride face to tail, and other ingenious sports."[2]

Then, too, pleading was more discriminating. In earlier law there was a wealth of well differentiated pleas. Pleas to the jurisdiction, to the person, to the court, to the writ, to the action of the writ, and pleas in bar, were each divided into many kinds, each kind covering some specific set of facts or question of law. As to pleas in bar, there was, for example, no omnibus general issue such as that which later developed in assumpsit, for example. The general issue in each action covered a limited number of fact situations enumerated in the old books. Special traverses were numerous and the learning as to special issues, *i. e.*, pleas in confession and avoidance, constituted the largest part of ancient books on pleading.

The result of both this great multitude of writs and this greater definiteness of pleading was much greater particularity and minuteness in the classification of human transactions for legal treatment than prevailed

2. Maitland, The History of The Register of Original Writs, 3 Harvard Law Review, 212, 225 (1889).

later. The judges were, by the particularity of the actions and the pleadings, brought and held closer to the actual transactions before them, whatever they may have said in their opinions. The result was that *stare decisis* meant something decidedly different at that time, being more specific and definite. It was operated in terms of abstractions no wider than the propositions of law covering the several classes of this more specific classification of human transactions. The abstractions were, therefore, relatively narrower. When principles were enunciated, though stated too broadly, they related, and were applied, only to these narrow categories of fact situations.

Then too *stare decisis* in actual operation meant something different at that time for the further reason that the phases of human life regulated in the King's Courts were those of a simpler life and time. Judges and lawyers could then more nearly acquire an adequate understanding of those phases of life by merely growing up and living in the society of the time. Transactions were simpler and more nearly homogeneous. Then, again, the courts of Westminster did not have cognizance of all phases of English life. Other tribunals and agencies were then operating.

For yet another and most important reason, *stare decisis* operated in earlier times with greater effectiveness. The abstractions made to correspond to the categories into which the more definite procedure of the time had grouped the human transactions of that simpler economy were quite contemporary. Considered absolutely many of them were old, but relatively they were recent. For great stretches of time there were few fundamental changes in the structure and operation of English domestic, industrial, and political life. Abstractions once made fitted longer. Corresponding rules of law asserting this or that about them, however abstract in phrasing, related, in actual operation, to fact situations to which they had not become alien. The resulting social control better fitted current needs. We in the field of law are far from having finished drawing all the implications of the fact that the last two hundred years have brought more changes in the circumstances of men living together than the previous two thousand years had done.

For these reasons and others no doubt, the empiricism of *stare decisis* proved a most effective and secure way of handling legal problems. What courts then did, as opposed to what they said, shaped itself to the life affected because the problems treated were less numerous and complex, their treatment of these legal problems was more particularistic, and their closer view of them was from the side on which men in life worked and worried with them. The method of *stare decisis* was preeminently empiric and so close and contemporary was the point of view that it might well be called a radical empiricism.

How the Retreat Began

But fundamental changes ensued. The phases of life regulated by the Courts of Westminster were multiplied. A whole society began to stir. A tide of change set in. The business of living together became more and more complex as man's activities became more and more diversified. There was the early rise of English trade with profound changes in rural living. There was later the Industrial Revolution. Problems of life requiring legal treatment multiplied in kind and complexity.

How did the legal thought of the time try to meet this situation? Was it done by increasing the number of actions and by elaborating pleading, *i. e.*, by improving the only machinery available for sorting and simplifying the situations of life for legal treatment? On the contrary, the number of actions became greatly reduced. Those retained were broadened to include both the situations covered by those abandoned and also a flood of wholly new situations. In addition, pleading lost much of its power to discriminate between differing fact situations. Some pleas were abandoned, others were broadened. The attempt to cope with the situation by thus dulling the tools for producing the discrimination necessary for intimacy of treatment is the over-towering fact in Anglo-American legal history of recent centuries. Take but one item in it. The debauching of the general issue in some of the most important actions, had many profound effects on the art of judicial government and the science of law. That Anglo-Saxon empiricism we know as *stare decisis*, which was evolved to deal with human problems as particulars, had thrust upon it the staggering task of dealing with them wholesale. Small wonder that judges and scholars have since gone off in search of help from strange and alien gods.

Reduction in the number of actions and pleas and the broadening of those that remained, with no substituting machinery of classification, resulted in wider and wider groupings of multiform states of fact. In order to subtend the hosts of fact situations thus fortuitously grouped into broader and broader classes, old abstractions had to be made more and more tenuous. The attempt to find new categories carved along lines other than procedural ones and calculated to bring the courts nearer in time and closer in detail to current life was slight and unsystematic. Instead, largely by fictions, old categories of facts were expanded to include diverse states of fact with the result that the very devices designed to bring and keep the courts close to the issues of life before them operated to remove them to positions more and more remote from the life which they regulated, with the result that they regulated it with an ever-decreasing feeling for its realities.

This process of widening generalizations was carried farther than was dictated by the falling away of procedural distinctions. A wave of continental learning swept over England, leaving a thick deposit of its obscurant abstractions, and much of it still remains. When the history of this period is fully written, we may find that the breakdown of procedure was partly an effect as well as a cause of this orgy of overgeneralization.

While the law was thus grouping the transactions of life into larger and larger piles, held together by common attributes more and more accidental, life rolled on, always concrete, always specific, but becoming more and more diversified with ominous speed.

The Movement in America

In this country, the presence of the frontier kept life simple for a while and there was a breathing spell which ended near the middle of the last century. How did we then go about meeting the situation? We did not meet it. We, too, ran away from it. We, too, first tried broadening our forms of actions and our pleas. Finally in most states, we executed a grand strategic retreat by reducing all forms of action to one, by making the general issues all but universal, and by abandoning all pleadings subsequent to the answer or the replication. Then abstraction and generalization ran riot. Courts and scholars began to talk less and less about what prior courts had actualiy done in order-

ing men's affairs and more and more about the universals they had promulgated. Great cargoes of continental speculations were imported and thrown in to make the dikes of the old abstractions hold. A whole new breed of law books sprang up,—encyclopediæ and corpora juris hastily made by stringing together judicial generalities usually innocuous and frequently inconsistent and by peppering them with cast citations either to the number of recent minimum or with the abundance of an undiscriminated deluge. Lawyers began to buy these books, first sparingly, then by wholesale, and courts began to quote their weighty findings.

Its Later Stages

In other quarters the retreat has been more orderly, but not less marked. The last quarter of the 19th century ushered in the university law school. In them a truly conscientious labor of excellent workmanship has been carried on patiently and persistently for the last forty or fifty years. During the first half of that period, there was a renewal of historical study. The old and recent cases were re-examined, not with a view, however, to finding new groupings of human transactions with their corresponding abstractions fitting more closely into current needs, but with a view to reconciling the welter of conflicts and exceptions which the mass of our law displayed when looked at through the peepholes of the old points of view. The old abstractions were modified and, as was inevitable, greatly expanded.

The second half of that period has been devoted largely to the process of logical elaboration. Absolutes and universals begin to replace mere generalizations. Broad principles begin to spring from few cases. If there be only one case in point and that be in conflict with some implication of our favorite universals, it is wrong—wrong on principle. This search becomes partly one for mere word patterns. Statements, if all inclusive so long as not self-contradictory, are enunciated as authoritative. This work in form and flavor is nearer to the work of continental theorists than that of the patient particularists who were our laws' early judges and scholars. The spirit of the common law may still reside in the day to day work of our judges who face realities as they decide cases, but it has all but departed the body of their opinions and the writing of scholars.

But life has been rolling on, always specific, always concrete, and in a broadening stream which, until it is charted, must seem like a flood. It rolls on, finding new ways around new and old obstructions, sometimes because of the law, often in spite of it. And it will keep on.

The Classificatory Function of Pleading

No return to the ancient procedural machine is advocated. The present classification of human situations of procedural origin may be sufficiently detailed and recent to serve in handling those situations as law suits in matters of pleading and practice. The wide scope of trover may be no serious disadvantage to a pleader. It may be an advantage. But it is a grave error to assume that a classification adequate for that purpose is either detailed or recent enough for the treatment of substantive rights by even the judge much less the scholar. Confusion follows if we overlook the fact that actions and pleading have had, and still have, in our law a classificatory function as well as a procedural one,[3] and if we overlook the further fact that the requirements of their procedural function have made the product of their taxonomic function over generalized and obsolete and hence inadequate for current needs.

What Was Lost by the Retreat

But what has this general retreat in legal thinking toward supergeneralized and outworn abstractions meant for the doctrine of *stare decisis?* It is just this retreat which I characterize as the shift from *stare decisis* towards *stare dictis.* Not that courts have ceased to be motivated dominantly by an intuition born of their experience and to respond to the stimulus of the facts in the concrete cases before them rather than to the stimulus of over-general and outworn abstractions in opinions and treatises. It is something to know that judges will continue to be men and that we shall always have some measure of that safeguard. But the effects of this shift, both on the art of judicial government and on legal science, are profound and unfortunate.

Losses in the Field of Government

The political virtues of *stare decisis* are difficult to exaggerate. It has two active qualities, one affording us the counsel of experience; the other, the latitude of trial and error. The first element of its strength and security is its unalterable refusal to indulge in broad speculation, and its untiring patience to keep attention pinned to the immediate problem in order that a wise solution for it may be found. It stoutly refuses to answer future questions, prudently awaiting the time when they enter the field of immediate vision and become issues of reality in order that to their solution may be brought the illumination which only immediacy affords and the judiciousness which reality alone can induce. It is indifferent to broad generalizations or is made apprehensive by them. It accepts few generalizations, narrow or broad, until they have been transmuted into the wisdom of experience by experimentation. It uses generaliaztions to suggest and to orient that experimentation but not to replace it. The second element in the strength and security of *stare decisis* is but another aspect of the constant immediacy of its ends. It leads us forward over untried ground, a step at a time, no step being taken until it is judged wise, and the stages of its advance are so short that the direction of march can be quickly shifted as experience dictates.

This tremendous political significance of *stare decisis* in the art of judicial government should not be overlooked and it should be seen as but one aspect of the political empiricism of English speaking peoples. The grace to drudge away on today's problem and the refusal to foreclose tomorrow's issues run all through our political endeavors. This sagacious opportunism in government has reared many of our most valuable institutions. In English statesmanship and diplomacy it made the British Empire and still holds together that structure which seems fragile only to those who do not know how it was wrought. It built the English Constitution and has shaped the evolving parts of our own. It abides in the very genius of our people and

3. To distribute transactions under the headings assumpsit, trespass detinue and replevin may be adequate for procedural purposes but it is inadequate as a classification of substantive law.

is our most important contribution to the art of modern government.[4]

Of all those political fabrics which Anglo-Saxon opportunism has woven, that, threaded together by *stare decisis* into our common law, shows richest with the work of patience and fine skill. Its methods can be improved, but we shall find no craftsmanship more worthy. A better informed public might well inquire, "Who are these innovators among us so active even further to undermine that time-tried and priceless institution?"

Losses in the Field of Legal Scholarship

The gradual and widespread drift away from the rigorous kind of work necessitated by the particularity and realism of *stare decisis* in its earlier application has had unfortunate consequences in the field of scholarship as well as in courts of justice. Scholarship has been drifting into a way of dealing with fact situations collected wholesale into groupings becoming more and more antiquated by the shift in the patterns of life. This drift has changed the very fiber of our work.

Of course, complete particularity in our treatment of legal problems is not possible. If states of fact are not grouped at all, no decision can be followed since no two cases are identical. Some abstraction and generalization is unavoidable if *stare decisis* is to operate so as to make law certain and impersonal. Some distance from the case in hand to give some perspective of view is unavoidable, and considerable distance is desirable. If we are to see and to judge the play, others must carry the ball. The shift from *stare decisis* has not been from absolute particularity to absolute generality but from greater particularity to greater generality. But the difference, though one of degree, has been great enough to alter the very texture of our work even though the outlines of its design seem still unchanged. Moreover, perfect modernity in the laws' treatment of life's problems is not desirable were it possible. This factor concerns not the distance, but the angle of our view of those problems. That angle should not shift with each move of the play. Unless the common law is to be capricious, it must lag a bit. It must lag enough for the fitful actions of men to disclose trends of customary practice.

But all this granted, there has been such a shift in our work on cases from particularity to generality of treatment and such a shift of life from the grooves of our present long-standing abstractions, that our scholarship becomes loose and unreal. No longer coerced to think in exact procedural moulds, and few substitute devices to compel particularity in thinking having been set up, our minds are free to wander. The former discipline of a more rigorous *stare decisis* is replaced by the current license of *stare dictis*. Our categories of thought have become unreal by life having left them behind and no alert sense of actuality checks our reveries in theory.

The effect of these two things is to cause most of our students to remain intellectual infants with toothless gums too soft except for munching elastic generalities with sophomoric serenity. The law's present classification of human activities, compels us to sit in places where life's game is no longer played. In pondering many of our long prized abstractions, we study dead bodies from which the life we would know has departed. When the unreality of it all is sensed, that reality is sought elsewhere. Generalized abstractions are called "principles" and these are endowed with a reality of their own. Generalized statements, when broad enough and old enough, transcend the world of time, place, and circumstance to dwell in realms of universal reality.

We use much of our scholarly resources to erect on sands thus doubly uncertain ambitious structures of pure reason expecting them to house all the activities of the whole work-a-day world, and then we seek to hold them together by the bare strength of combined professional authority.

If such be a science of law, it is unique. Law purports to be not a pure science, but an applied science. All other applied sciences have both a rational and an empirical branch. The work of observing and testing reality goes hand in hand with that of elaborating theory and explanation. Law approximates the unearthy perfection of pure reason. The products of a legal science which neglects its empirical branch share some of the futility of the findings of a cloistered biologist whose mind ponders only such specimens as his cat may chance to bring in.

Those are but some of the losses strewing the field of legal scholarship in the wake of the retreat from *stare decisis* toward *stare dictis*.

Evidence of these Losses

So severe an estimate may well be challenged; but what is some of the evidence? We are often told that, because of the overwhelming multiplication and conflict of cases, authoritative generalization must replace individualized treatment of cases. In the first place, it should be well marked and most soberly considered that this judgment is made when only pennies have ever been spent by any of our universities on particularized or objective research in law. In the second place, a science of law cannot be built on experimentation. Like geology, its rational branch must rest on testing by observation. If our main business as legal scientists is to predict the behavior of courts in deciding future cases, then, when we complain that there are too many cases—cases of observed judicial behavior—we take the position of a geologist complaining that too many observations of the earth's crust are being made. In the third place, there would be no conflicts among the cases if they were not grouped at all under any generalizations. This suggests the possibility that, as to many of the exceptions and conflicts of which we complain, the difficulty may be with parts of our classification and not with the results actually reached by the courts. That classification being based on abstractions which changes in life have made obsolete, it would not be surprising if we should find that judges, responding to the needs of current life, had frequently departed from the confines of that classification though still stating and justifying their results in terms of it.

We have been drifting from observation of judicial action to an excess of concern about judicial utterances. More and more we have been taking abstractions of the past,—many going back to medieval scholasticism—and tracing them down, not through the holdings of the cases, but through the opinions to see how they have fared in those essays of rationalization. There has been little but lip service to the discipline of seeking the exact holdings of cases, as opposed to their generalized pronouncements, except when the cases happen to lie near the rim of some

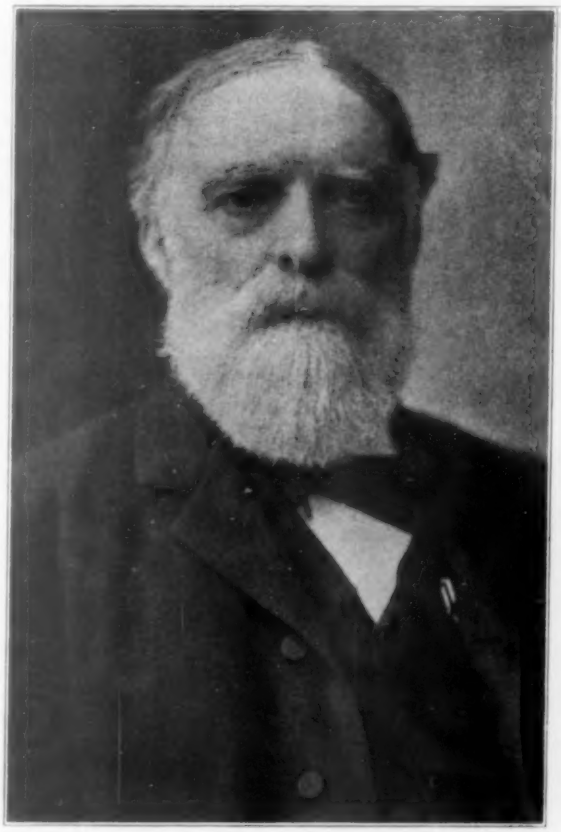
(Continued on page 107)

4. This does not, of course, carry any implication that there is no need for forethought in the scheme of things.

JOHN F. DILLON: FOURTEENTH PRESIDENT OF ASSOCIATION

By Harry Hubbard
Member of the New York Bar

JOHN FORREST DILLON was born in Northampton, Montgomery County, New York, December 25, 1831, son of Thomas and Rosannah Dillon. His father and family went west in 1838. Settlements in the West in those days of no railroads and few wagon roads were chiefly on the big rivers because of the advantages of river travel and transportation. Davenport, Iowa, was a promising location on the Mississippi, and a settlement there was quite natural for the Dillon family. Judge Dillon often told me there were more "blanket" Indians than white men in those early days in Davenport.



JOHN FORREST DILLON

It is perhaps not easy now to appreciate fully the "Go West, Young Man" fever which then prevailed. Among others who caught the fever was Hiram Price, who lived in Hollidaysburg, Pa. He first went with his family to Ohio, but the title to land he bought there proved defective, and he resolved to go further West. So he put his family and household goods, and his stock of drygoods for his store, on an Ohio river steamer and went with them down the Ohio, and then up the Mississippi, intending to go way up North on that river. Hiram Price's steamer made a stop at Davenport. Unloading and loading a steamer was then a matter of time and thus he and his family had an opportunity to look about in Davenport. They liked the looks of the place and people so well that they had their household goods and store goods unloaded and settled there.

The little Dillon boy of course was down at the river front to see the steamer arrive, an event of no little importance. In the family of Hiram Price was a little flaxen-haired girl, who got off the steamer with them, and that was the first meeting of the boy who became Judge Dillon with this little girl, Anna Price, who later became his wife.

Hiram Price grew with the State, acquired a competence, became Member of Congress, and Indian Commissioner, and in his later years lived in Washington, where I often had the pleasure of calling on him with Judge Dillon.

The Dillon boy studied medicine in the office of Dr. Barrows of Davenport, graduated from the College of Physicians and Surgeons of Davenport, a Medical Department of Iowa University, became a physician and practiced medicine a short time at Farmington, Iowa.

If it had not been for two seemingly minor facts Doctor Dillon might have continued to practice medicine all his life and the bench and bar might have never known his judicial and law work. There were then not only few railroads, but few good wagon roads. So a doctor, to attend his patients, must needs ride horseback over muddy or sandy roads unfit for carriages. By some accident Doctor Dillon had a slight hernia which made it unsafe or unwise for him to ride horseback. Nothing daunted by this slight misfortune (which he often mentioned among his intimate friends as the reason for giving up the practice of medicine) Doctor Dillon resolved to study law. While the study of medicine might seemingly have been a waste of time, I have often thought it was really a gain, and that it enabled him so to order his life as to live and work in health and vigor to his ripe old age.

Doctor Dillon began his study of law at Farmington in his own medical office, by reading Blackstone's Commentaries, loaned him by Mr. Howe, a lawyer friend. He continued his studies alone with no law school, and no teacher, and was admitted to the bar in 1852.

In 1852 lawyer Dillon was elected prosecuting attorney, and in 1858 he began his judicial career by becoming Judge of the Seventh Judicial District of Iowa. He was elected in 1862 for a second term but before the end of the term he was elected Justice of the Supreme Court of Iowa for six years, and during the last two years of the term he was Chief

Justice. He was re-elected to the State Supreme Bench in 1869; but in December, 1869, he was appointed by President Grant United States Circuit Judge for the Eighth Circuit, under Act of Congress of April 10, 1869, (16 Stat. 44), which created the offices and provided for the appointment of Circuit Judges. Down to that date, and even for some time afterwards, when the Justices of the Supreme Court of the United States were not as busy as now, they used to make their *iter* (which probably had its origin in the old *iter* of the King's Bench in England), sitting in the various United States District Courts.

In order to keep our narrative somewhat in chronological order we will interrupt the story of Judge Dillon's judicial services, which lasted for about twenty-one years, 1858-1879, uninterruptedly, to mention what Judge Dillon himself justly regarded as one of his greatest services to the nation and to his profession, his work on Municipal Corporations.

About the year 1866 Judge Dillon began the writing of the first edition of Dillon on Municipal Corporations, doing this work in the private library of his friend, Judge Grant, in Davenport. How Judge Dillon gathered the material for this great work is best told in his own words in his address at the dedication of the Free Public Library in Davenport in 1904:

"Without the aid of stenographer or typewriter, and with no previous American treatise to guide me, I began an examination, one by one, of some thousands of the law reports, commencing with Volume 1 of the State of Maine, and continuing through successive reports of that State to date. In like manner the reports of every one of the States and of the Federal and English Courts were examined, occupying all my available time for about six years. The result of this research I have never had occasion to regret. The book was successful, and it has profoundly affected my whole professional career."

The work has had five editions, 1872, 1873, 1881, 1890 and 1911, all by Judge Dillon himself, with aid in the later editions in looking up the cases. The first edition was dedicated to Mr. Justice Samuel F. Miller, Judge Dillon's early and faithful friend of many years, and the last edition was fittingly dedicated to the whole American Bar Association. It would be idle for me to say more of this great work which lawyers know so well

The Eighth Circuit, when Judge Dillon became Circuit Judge in 1869, consisted of the States of Minnesota, Iowa, Missouri, Arkansas, Kansas and Nebraska, states big in area but small then in population. The cases, few at first, grew to ten times the number during the ten years Judge Dillon was on the Circuit Bench. They included all sorts of questions. Litigants sought more and more to bring important cases into the United States Courts. Judge Dillon found it desirable to write a book on Removal of Causes (1875) to help lawyers seeking to remove cases from State to Federal Courts.

In 1871 Judge Dillon began the United States Circuit Court Reports which bear his name, 5 volumes, cases 1870-1879. A glance through these reports shows the great variety of law questions involved in the cases.

The travel, in holding court in these six states, great in distances, brought Judge Dillon into contact with the leading lawyers in these states, and also the pioneer railroad builders there. These associations were kept alive all through Judge Dillon's life by frequent meetings of these prominent men in New York and Washington. The Union Pacific and Central Pacific railroads were built 1865-1869, right after the Civil War, in order to bind the Pacific States close to the Union. (How far off they were only shortly before the war one can readily understand if he reads that famous book on California of 1836-1838—Dana's "Two Years Before the Mast").

In 1879 Columbia University Law School, New York City, called Judge Dillon to be Professor of Real Estate and Equity Jurisprudence, and "after a painful struggle of more than two months," he consented to accept. So he resigned as United States Circuit Judge, and on September 1, 1879, terminated a continuous judicial career of about twenty-one years.

Also, about the same time Judge Dillon was invited to become General Solicitor of the Union Pacific Railroad Company. Sidney Dillon, uncle of Judge Dillon, was one of the builders of the Union Pacific, and later its President. Shortly after Judge Dillon's arrival in New York he had the work of consolidating this Union Pacific with the Kansas Pacific and Denver Pacific, thus forming the Union Pacific Railway Company, which was foreclosed when the present Union Pacific came into existence in the later nineties.

Judge Dillon continued as Professor at Columbia for about three years until the calls for his services as lawyer were so important that he concluded to devote his entire time to the practice of the law. He was well equipped for his new work, and his years thereafter in the practice of the law were full of services to his fellowmen. For many years he argued more cases in the Supreme Court of the United States than any other lawyer. His twenty-one years as judge, ten years of them as United States Circuit Judge, had given him a training in Federal Jurisprudence not had by many lawyers who appeared in the Supreme Court. He knew the "record" in his case, whether it contained a Federal Question, and what that question was, and presented "*the case*" fully to the Court. It was characteristic of him that in presenting cases in the Supreme Court he spent most of his allotted time in stating the case fully and very little time in arguing the law of the case.

Judge Dillon was counsel for many years for the Union Pacific Railway Company, the Missouri Pacific Railway Company, the Western Union Telegraph Company, the Manhattan Railway Company, and for other corporations. In the practice of law Judge Dillon never tied himself to any corporation or individual exclusively, but controlled his own time. He was thus free to render important services to other clients and to the public.

In his adopted city of New York Judge Dillon helped in the very important work of acquiring the New Parks, as then called, i.e., Bronx, Pelham Bay and Van Cortlandt Parks. Also, he was a member of the Commission which drafted the new charter, adding Brooklyn, Long Island City and other municipalities, and creating the greater city of New York as it now exists. He was consulted at other

times by New York City officers and their attorneys in important matters of the city.

Other lawyers came from all over the country to consult Judge Dillon, in corporation law, municipal bond matters and in important litigation. In municipal bond law it is not too much to say that he had a very important part in making that law as it exists today. Contests as to legality of municipal bonds used to be very numerous in the courts, and they were fought out, many of them by Judge Dillon, until the law was placed on a solid foundation.

Trips to Washington for cases before the Supreme Court were frequent, and it was one of the great pleasures of his life to meet there his lawyer friends from the West, in the Supreme Court Room, in Wormley's and the Arlington and elsewhere in the city.

Judge Dillon was President of the American Bar Association in 1891-2.

In 1891-2 Judge Dillon delivered thirteen lectures at Yale Law School, in the William L. Storrs Lectureship; and in 1894, he printed these lectures in a volume entitled "Laws and Jurisprudence of England and America," and dedicated them to his wife, "A. P. D.", who was the little flaxen-haired girl who landed with her parents from the steamer at Davenport.

In the "Annals of Iowa, A Historical Quarterly," in the April and July numbers, 1909, is a Life of Judge Dillon, by Hon. Edward H. Stiles, who was Reporter for the Supreme Court of Iowa when Judge Dillon was on that bench.

Judge Dillon passed on peacefully in New York, May 5, 1914, after a life filled full of good works and unusual services to his fellow men.

Judge Dillon was a great lawyer. He had most unusual strength of body and brain to endure mental work for a long period at a time and for long years of life. He had another requisite, infinite patience to take plenty of time to learn the facts and to study the particular matter before him and the law applicable to it. He had also that other qualification of absolute honesty of mind. No man could come to Judge Dillon to get him to do things contrary to the right. Men consulted him to learn the truth of the matter and the law, and never to persuade him to try to do crooked things for them. I never knew or heard of him doing a thing mean or dishonorable in the least degree. After Judge Dillon's death his son Hiram wrote me that while he thought of his father as a great judge and a great lawyer, he thought of him more as a good man. All who knew him shared that opinion.

In the years that Judge Dillon practiced law he acquired a competence. He did not, however, charge exorbitant fees. I know of several instances where clients insisted on doubling the fees he had named at the end of the services. He never, so far as I knew, speculated to make money, not even if, as a lawyer, he knew facts which might have been useful in a speculation.

Judge Dillon was a lawyer, first, last and all the time. His whole life was devoted to the law. He had a sense of justice and right such as few men have, and he permitted nothing to interfere with performance of duty.

Judge Dillon was, also, a companionable man. All his friends loved him, and he loved them. He liked to be with them. He liked travel, and did a great deal, considering the busy life he led. He was very fond of books (not bindings, but books themselves), and in his big library at Far Hills, New Jersey, he had a great collection of them—general works, not law books, where he liked to browse and where he spent happy years in company with his family and good friends. He wanted a big library, and probably he had cherished that ambition ever since he spent those six years of hard work in that private library of Judge Grant of Davenport.

Judge Dillon still lives and will continue to live in the hearts of those who knew him as a lawyer unusually able and faithful to the best traditions of the profession, a just judge, beyond reproach and beyond suspicion, and an upright, lovable man and friend; and some who knew him best find their words inadequate to describe him and to express their admiration and love for him.

American Bar Association Committee on Commerce

Annual Meeting to be held in the Building of the Chamber of Commerce of the State of New York, 65 Liberty Street, New York City, Tuesday, Wednesday and Thursday, March 20, 21 and 22, 1928.

Agenda

Tuesday, March 20, 1928.

10:00 A. M. 1. Suggestions of—
- (a) New business.
- (b) Other subjects.

11:00 A. M. 2. A Bill providing for damages in collision cases on navigable waters of the United States where more than one vessel is at fault.

3. A Bill relating to bills of lading for carriage of goods by sea.

2:00 P. M. 4. Revision of calendar to provide for 13 months instead of 12.

5. Amendments to Federal Arbitration Law.

Wednesday, March 21, 1928.

10:00 A. M. 1. Amendments to the United States Anti-Trust Laws.

2. Senate Bill No. 2792, 69th Congress, known as United States Contract and Sales Bill.

2:00 P. M. 3. Bill relating to the settlement of Industrial Disputes to be enacted by the United States Congress.

Thursday, March 22, 1928.

10:00 A. M. 1. Bill relating to motor vehicles used in interstate commerce and upon highways receiving United States aid.

2. Instruments relating to interstate and foreign negotiable paper, fire insurance policies and warehouse receipts.

11:00 A. M. 3. Executive Session.

COMMONWEALTH OF KENTUCKY VS. ABRAHAM LINCOLN

Evidence Recently Uncovered of Only Instance in His Life When Lincoln Was Charged with a Penal Offense—"Squire" Pate Carefully Consults Laws of Kentucky and Completely Vindicates Young Defendant

By William H. Townsend
Member of the Lexington, Kentucky, Bar

DURING the fall and winter of 1826, Abraham Lincoln worked on a ferryboat near Posey's Landing, at the mouth of Anderson Creek and the Ohio River, in Spencer County, Indiana. His employer was James Taylor, and his wages were six dollars a month and board. River traffic in those days was at its height. The broad surface of the Ohio carried a constant stream of travel—flatboats, loaded with pork and corn, that followed the gentle current toward the Mississippi; passenger steamboats sturdidly ploughing upstream to Louisville and Cincinnati; home-seekers with families and household goods on their way to the frontiers of the North and West. The new job was a fascinating experience to the young ferryman of seventeen, as he mingled with types of humanity more varied than the backwoods had ever produced.

The early spring of 1827 found him at home again, sixteen miles north of the Ohio River near Gentryville, with his cousin Dennis Hanks, who had been reared with Lincoln and was his most intimate boyhood companion. A glimpse of that association is contained in a characteristic letter from Dennis Hanks to William H. Herndon, who, after Lincoln's death, wrote to Dennis for biographical data on Lincoln's Indiana years. This letter, spelling and all, is an exact copy of the original now in the Herndon papers:

"December 24, 1865.

"Friend William

you speak of my Letters written with a pencil. the Reason of this was my Ink was froze.

part first. we ust to play 4 Corner Bull pen and what we cald cat. I No that you No what it is and throwing a mall over our Sholders Backwards, hopping and half hamen, Resling and so on.

2nd what Religious Songs. The only Song Book was Dupees old Song Book. I Recollect Very well 2 songs that we ust to Sing, that was

'O, when shall I see jesus and Rain with him aBove.' the next was 'How teageous and tasteless the hour when jesus No Longer I see.'

I have tried to find one of these Books But can't find it. it was a Book used by the old predestinarian Baptists in 1820. this is my Recollection aBout it at this time. we Never had any other.

the Next was in the fields

"Hail Collumbia Happy Land if you aint Broke I will Be Damned' and 'the turpen turk that Scorns the world and Struts aBout with his whiskers Curld for No other man But himself to See' and all such as this. Abe youst to try to Sing pore old Ned But he Never could Sing Much.

Your Friend,

Dennis Hanks"

But even the unique personality of the inimitable Dennis could not keep Lincoln any longer under the old roof-tree. The bustle and adventure of the river were in his blood, and in a short time he was back on the Ohio, this time at Bate's Landing, a mile and a half below the mouth of Anderson Creek, hard at work in the construction of a scow or light flatboat of his own. His ambition was to load his craft with produce and made a trip down the river, perhaps to the great market of New Orleans. However, when the boat had been finished he discovered that it was not so easy to obtain a cargo, and the little money that he had saved from his meager earnings during the fall and winter was gone. He would have been in desperate straits, as he waited for business, had he not obtained occasional employment to carry travelers and their baggage out to steamers that they had hailed and stopped in mid-stream.

It was in this way that Lincoln earned his first dollar for less than a full day's work, and the story, as related by him many years later to Secretary Seward and other members of his Cabinet, ran as follows:

"I was contemplating my new flatboat and wondering whether I could make it stronger or improve it in any particular, when two men came down to the shore in carriages with trunks and, looking at the different boats, singled out mine and asked: 'Who owns this?' I answered, somewhat modestly, 'I do.' 'Will you,' said one of them, 'take us and our trunks out to the steamer?' 'Certainly,' said I. I was glad to have the chance of earning something. I supposed that each of them would give me two or three bits. The trunks were put on my flatboat and the passengers seated themselves on the trunks, and I sculled them out to the steamer.

"They got on board and I lifted up their heavy trunks and put them on deck. The steamer was about to put on steam again when I called out that they had forgotten to pay me. Each of them took from his pocket a silver half-dollar and threw it on the floor of my boat. I could scarcely believe my eyes as I picked up the money. Gentlemen, you may think it was a very little thing, but it was the most important incident in my life. I could scarcely credit that I, a poor boy, had earned a dollar in less than a day—that by honest work I had earned a dollar! The world seemed fairer and wider before me. I was a more hopeful and confident being from that time."

But this occupation, strangely enough, before long got him into the toils of the law. This experience is the only instance in his life when Abraham Lincoln was ever charged with a penal offense, and the facts con-

nected with it remained unknown until the record and evidence were recently uncovered by the writer.

One morning just as Lincoln had delivered a traveller to a passing boat, he was hailed from the opposite side by John T. Dill, a rangy, sunburned riverman, who operated the ferry near this point. In response to the signal, Lincoln rowed over to the Kentucky shore. No sooner, however, had his boat touched the bank than, to his utter surprise, he was roughly seized by Dill and his brother Lin, who had been hidden in the bushes.

"Squire" Pate's House, at Which Lincoln Was Tried

In vehement language, they accused Lincoln of interfering with a licensed ferry by transporting passengers for hire and, in spite of his protests that he had not meant to do anything wrong, nor to break any law, they announced their intention to "duck" him in the river then and there and confiscate his boat. Finally after much storming and swearing, probably influenced by the rather formidable physique of the young riverman, the Dill brothers decided not to attempt the infliction of punishment themselves, but to invoke the law instead.

This method of settling the difficulty was satisfactory to Lincoln, and, without further delay, they set out for the home of Samuel Pate, a farmer and Justice of the Peace, who lived only a short distance down the river. The ferry was being operated from the Kentucky side of his land, and the Dills were confident that Pate would inflict swift and adequate punishment on their bold and lawless competitor.

Squire Pate had just erected a large, comfortable house of hewn logs, with a long, wide porch and an east room more spacious than the rest where he could hold court. He was at home when the party arrived, and, a warrant having been sworn out by John T. Dill, both sides being ready, the trial of the Commonwealth of Kentucky versus Abraham Lincoln proceeded.

The prosecuting witnesses related how the defendant had on several occasions carried passengers and baggage from the Indiana shore to steamers out in the river. They testified that they had seen these passengers pay the defendant for the service rendered and that he was, therefore, infringing on their ferry franchise contrary to law.

The defendant, having no witness but himself, took the stand in his own behalf, and frankly admitted that, while waiting for a cargo to take down the river, he had carried travelers and their baggage out to passing steamboats; he had not known that this was against the law and he had not intended to encroach on the business of the regular ferry. In fact, he had carried no passengers that the ferry could have handled, since in each instance the regular boat had been on the opposite side of the river, sometimes tied up without attendants, and the steamers, as everybody knew, would not wait.

The tall, gawky figure of the youthful defendant, clad in deerskin shirt, home-made jeans breeches, dyed brown with walnut bark, coonskin cap crumpled in his big, callous hands, together with the obvious sincerity of his testimony, must have impressed Squire Pate, who, at the conclusion of the evidence, got down his battered copy of Littell's Laws of Kentucky and began to examine it with more than usual care.

Turning from the index to a chapter entitled "An Act Respecting the Establishment of Ferries," he studied it for a few moments, and then, in an easy, informal fashion, delivered the judgment of the Court. The northern boundary of Kentucky ran to low-water mark on the Indiana side of the Ohio. Consequently, although the alleged offense had been committed from the far side of the river, the courts of Kentucky had jurisdiction. But had any offense, in fact, been committed? Section 8 of the chapter relating to ferries provided that:

"If any person whatsoever shall, for reward, set any person over any river or creek, whereupon public ferries are appointed, he or she so offending shall forfeit and pay five pounds current money for every such offence; one moiety to the ferry-keeper nearest the place where such offence shall be committed, the other moiety to the informer; and if such ferry-keeper informs, he shall have the whole penalty to be recovered with costs."

This, the Court observed, was heavy punishment, especially in view of the fact that, under the law, those unable to pay such fine must go to prison. This statute must, therefore, in the interest of justice, be strictly construed. Now, the testimony failed to show that the defendant, Lincoln, had ever "for reward set any person over any river or creek." "Over" meant "across" and it was not claimed that the defendant had ever taken anybody "across" the river for "reward." The evidence was clear that he had taken passengers for hire out to the middle of the river, but this had not been made an offense by the Legislature of Kentucky. The warrant against the defendant must, therefore, be dismissed.

After the Dill brothers, much disgruntled, had departed, Lincoln sat on the porch for a while, talking to Squire Pate. The Squire spoke of the many difficulties that arose through ignorance of law, and expressed at some length his opinion that every man would be a better and more useful citizen if he possessed a general

knowledge of the laws under which he lived and particularly those relating to the business in which he was engaged. The young riverman listened attentively to everything the older man said and asked many questions about law and court procedure. In fact, he seemed so much interested that, as he left the house, Pate invited him to attend future sessions of his Court when convenient to do so. And thereafter Lincoln on several occasions paddled across the Ohio to what was known in the vernacular of the backwoods as "law day" at the house of Squire Pate.

Samuel Pate has long since gone to his reward. A simple headstone in a little ivy-covered plot at the bend of the river marks his grave. But the old house of logs hewn by his own hands, now weather-boarded, has stood well the weight of years, with its wide porch and spacious east room just as they were the day of Lincoln's trial nearly a century ago.

Just what influence toward the study of law this experience had on Lincoln will, of course, never be known. It is a fact, however, that following this incident he began the study of his first law book, "The Revised Laws of Indiana," which he found at the home of his intimate friend, David Turnham, six years Lincoln's senior. To these statutes were prefixed, as stated in the title-page, "The Declaration of Independence, the Constitution of the United States, the Constitution of the State of Indiana, and sundry other documents connected with the Political History of the Territory and State of Indiana. Arranged and published by authority of the General Assembly."

Young Lincoln, according to his stepmother, Sally Bush Lincoln, his cousin Dennis Hanks, and David Turnham, studied this book with intense application. In a letter to William H. Herndon, dated October 12, 1865, the original of which is in the possession of the writer, Turnham says of this book: "When Abe and I were associates he would come to my house and sit and read it. It was the first law book he ever saw." Turnham was a Constable at that time, and, as an officer of the law, was required to keep his statutes at hand for ready reference. And, since the book could not be borrowed, Lincoln came to the Turnham home day after day until he had thoroughly absorbed its contents. Here he read for the first time not only the imperishable declaration that "all men are created equal," but also the Constitution of the United States, the Act of Virginia of 1783, by which the territory "northwestward of the river Ohio" was conveyed to the United States, and the Ordinance of 1787, governing this territory which contains the famous sixth article:

"There shall be neither slavery nor involuntary servitude in the said territory otherwise than in the punishment of crimes, whereof the party shall have been duly convicted: provided always that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."

Undoubtedly the boy of eighteen was deeply impressed by these immortal documents. That he was permanently influenced by them, Lincoln publicly acknowledged thirty-four years later at Independence Hall, Philadelphia, when he said: "All the political sentiments I entertain have been drawn, so far as I have been able to draw them, from the sentiments which originated and were given to the world from this Hall. I never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence," and Miss Tarbell's recent book, "In the Footsteps of the Lincolns," commenting on this utterance, says: "It was in David Turnham's Statutes of Indiana that he first found these sentiments. He did not merely read the documents in the Revised Statutes, he studied them, pondered them, saturated himself with them. They were the strongest, most satisfactory food his mind had yet found."

It is fortunate that the original copy of these statutes has been preserved. Few of the books that Lincoln read in boyhood now exist. The Lincoln family Bible, in the famous Oldroyd collection in Washington; "The Kentucky Preceptor," in the superb collection of Oliver R. Barrett, of Chicago; and the "Revised Laws of Indiana," now owned by the writer, are all that a close search has revealed.

In 1865, David Turnham gave the original copy of the "Revised Laws of Indiana" to William H. Herndon, Lincoln's law partner and biographer, who, a few years before he died, presented it to the Lincoln Memorial Collection of Chicago. When this collection was sold in Philadelphia, December 5, 1894, Mr. William H. Winters, Librarian of the New York Law Institute, purchased this book and it remained in his hands until the disposal of his library at auction, after his death, March 8, 1923, at which sale it was acquired by the writer and is now in his collection of Lincolniana at Lexington, Kentucky.

Pasted inside the front cover of his old volume is an interesting history of the book, in the handwriting of William H. Herndon, as follows:

"In the year 1865 I was in Spencer County, Indiana, Lincoln's old home, gathering up the facts of young Abraham's life. I then and there became acquainted with David Turnham, merchant and man of integrity, a playmate, schoolfellow, associate, and firm friend of Mr. Lincoln, who gave me, at that time and place, a good history of young Lincoln. I took the history down in his presence at the time. At the conclusion of our business, he asked me if I would like to have some relic of Mr. Lincoln, and to which I said I should like to have such relic very much; he then gave me this book, stating to me that it was the first law book that Lincoln ever read. I now present this sacred relic to the Lincoln Memorial Collection, May 18th, 1886.

"Wm. H. Herndon."

Although in after years, their paths seldom crossed, Lincoln never forgot his old friend, David Turnham. In the midst of grave responsibility and the cares and anxiety that came to the Presidential candidate, firm in the resolve to maintain the principles which he had been taught long ago in Turnham's book, Lincoln found time to write the following rather wistful letter, which has recently come to light in the custody of George Turnham, a son of the Indiana Constable:

"Springfield, Ill., Oct. 23, 1860.

"David Turnham, Esq.

My Dear Old Friend:

Your kind letter of the 17th is received. I am indeed very glad to learn that you are still living and well. I well remember when you and I last met, after a separation of fourteen years, at the cross-roads voting place in the fall of 1844. It is now sixteen years more and we are both no longer young men. I suppose you are a grand-father; and I, though married much later in life, have a son nearly grown. I would much like to visit the old home and old friends of my boyhood, but I fear the chance for doing so soon is not very good.

Your friend and sincere well-wisher,

A. Lincoln."

STATE DIRECTORS NAMED IN MEMBERSHIP CAMPAIGN

Qualifications for Membership in the American Bar Association—Other Information—Application Blanks May Be Secured at Headquarters, of the State Director or from Members of Membership Committee

WITH the announcement of the names of State Directors for the Semi-Centennial Membership Campaign, which appears in this issue, the most important detail of the Membership Committee's organization for the work is completed. These directors will cooperate with that Committee in carrying the arguments in favor of joining the American Bar Association to the Bar of their own States, and it is expected that as a result of their efforts the membership of the organization will be greatly increased. A total membership of 35,000 by the time of the Semi-Centennial celebration in Seattle the latter part of July has been suggested as a reasonable and satisfactory goal which may well be reached. Following is a list of State Directors:

STATE	STATE DIRECTOR	CITY
Alabama	Valentine Nesbit	Birmingham
Alaska	R. E. Robertson	Juneau
Arizona	Frank E. Curley	Tucson
Arkansas	R. E. Wiley	Little Rock
Canal Zone	G. H. Martin	Ancon
Colorado	Kenaz Huffman	Denver
Connecticut	Harrison Hewitt	New Haven
Delaware	Charles F. Curley	Wilmington
Dist. of Columbia	John Lewis Smith	Washington
Florida	W. I. Evans	Miami
Georgia	Thomas E. Ryals	Macon
Hawaii	A. G. M. Robertson	Honolulu
Idaho	E. J. Frawley	Boise
Illinois	E. A. Zimmerman	Chicago
Indiana	Earl B. Barnes	Kokomo
Iowa	Wesley Martin	Webster City
Kansas	Robert Stone	Topeka
Kentucky	Wm. Marshall Bullitt	Louisville
Louisiana	George Janvier	New Orleans
Maine	Arthur F. Tiffin	Augusta
Maryland	George L. Radcliffe	Baltimore
Massachusetts	Stoughton Bell	Boston
Michigan	Byron L. Ballard	Lansing
Minnesota	John Junell	Minneapolis
Mississippi	L. Barrett Jones	Jackson
Missouri	Maurice H. Winger	Kansas City
Montana	W. H. Hoover	Great Falls
Nebraska	Charles E. Matson	Lincoln
Nevada	John Bernard Foy	Reno
New Hampshire	Conrad Snow	Rochester
New Jersey	Wayne Dumont	Paterson
New Mexico	Orie L. Phillips	Albuquerque
New York	George W. Wanamaker	Buffalo
North Carolina	William M. Hendren	Winston-Salem
North Dakota	John Knauf	Jamestown
Ohio	John A. Elden	Cleveland
Oklahoma	James S. Twyford	Oklahoma City
Oregon	Lawrence T. Harris	Eugene
Pennsylvania	Edgar S. Richardson	Reading
Rhode Island	James C. Collins	Providence
South Carolina	Alva M. Lumpkin	Columbia
South Dakota	Tore Teigen	Sioux Falls
Tennessee	William P. Metcalf	Memphis
Texas	Palmer Hutcheson	Houston
Utah	Wilson I. Snyder	Salt Lake City
Vermont	Fred M. Butler	Rutland
Virginia	Robert E. Peyton, Jr.	Richmond
Washington	Loren Grinstead	Seattle
West Virginia	Clarence E. Martin	Martinsburg
Wisconsin	H. H. Smith	New Richmond
Wyoming	H. Glenn Kinsley	Sheridan

Membership in American Bar Association

Qualifications

The constitution declares membership in good standing at the bar of any state during the last three years (part of which may have been spent in one state and part in another) a prerequisite to election.

Dues

Each member shall pay to the Association for dues six dollars for the period of each year from July first to June thirtieth following, payable on July first of each year in advance, which sum shall include the cost of subscription to the American Bar Association Journal, which to members is $1.50 per year.

A newly elected member shall pay in advance such dues pro rata for the balance of such year in which he is elected, computed on a quarterly basis, beginning with the quarter of the year in which his nomination or application for membership is made.

Members receive the monthly "American Bar Association Journal" and the printed annual reports of the proceedings of the Association, constituting a valuable year book of the profession in this country, in which their names are listed as members, both in the alphabetical list and in the list of members arranged by cities and towns in state.

Life Membership

Annual dues, at the option of any member, may be commuted by the payment of $100.00 at one time; and thereafter no further dues shall be payable by any such member.

Application Blanks

Blank applications for membership in the American Bar Association may be obtained by applying to Headquarters, 209 S. La Salle St., Chicago, to the State Directors, or to the following:

Membership Committee

Edward A. Zimmerman, Chairman, 11 So. LaSalle St., Chicago.

Frank E. Curley, Southern Arizona Bldg., Tucson, Arizona.

John Junell, First National-Soo Line Bldg., Minneapolis, Minn.

Valentine Nesbit, American Traders Bldg., Birmingram, Ala.

Harrison Hewitt, 121 Church St., New Haven, Conn.

AMERICAN BAR ASSOCIATION JOVRNAL

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JOSEPH R. TAYLOR, MANAGER
Journal Office: Room 1119, The Rookery Bldg.,
209 South La Salle St., Chicago, Illinois

MAINTAINING A GREAT LEGAL TRADITION

In attempting to aid in the formulation of legislation for the peaceable adjustment of industrial controversy the Association's Committee on Commerce is following and maintaining one of the fine traditions of the profession. Lawyers know, if many laymen do not, that one of their duties is to do what they can to prevent litigation and strife. This preventive function of the Bar is more widely exercised in business affairs than is generally understood. To lend its aid toward peaceable adjustment and prevention of conflict in the wider industrial field is thus to make no new departure or effort to inject itself into matters with which it is not concerned.

The Committee is likewise following sound precedents in legal, as well as in what may be called industrial, statesmanship by seeking a practical basis for its recommendations. It is easy enough to settle these problems on theoretical grounds, but unfortunately theoretical abstractions are seldom effective in concrete application. What is wanted is something that will work, not something that will read well. In the idea of extending the principle of voluntary arbitration to this field, by validating agreements made by the parties at the outset to settle their controversies in their own way, the Committee thinks it has reason to believe it has found a ground on which capital, management and labor may be induced to meet. This will, of course, be recognized as simply an extension to the industrial field of the principle adopted in dealing with commercial disputes. Certainly the interest which has been manifested in the proposal by representatives of the great labor organizations as well as by business men of vision and grasp of affairs is a good augury.

The plan which the Committee has under consideration, and which will be further discussed at the hearings in New York City on March 21, is set forth in the following tentative platform contained in a recent statement of a Sub-Committee of that body:

"To promote good will between those investing capital, those participating in management and those who render service in industry, and to facilitate the moving of commerce without wasteful interruption of industry, it is hereby declared to be the policy of the United States in the field of interstate and/or foreign commerce (and in so far as it may lawfully do so in the field of intrastate commerce) to promote the peaceful adjustment and prevention of industrial controversy by encouraging the making and maintenance inviolate by responsible organizations of employers and responsible organizations of men and/or women of contracts for the adjustment of their relations, through negotiation and arbitration, such contracts when freely and voluntarily made to be in all respects lawful and binding and the provisions for settlement of differences by arbitration to be irrevocable and enforceable in the manner hereinafter provided; it is declared further to be a part of said policy to encourage the peaceable and orderly ascertainment of the true facts in all industrial situations coming within Federal cognizance and thus to promote the use of rational and lawful methods in the settlement of controversies arising out of such industrial situations.

"To that end and with that objective, provision is herein made for the legal effectuation of agreements containing provisions for arbitration and for the establishment of a National Industrial Council constituted as hereinafter provided and having the powers and duties hereinafter enumerated."

Compulsory arbitration and all other plans involving compulsion have no doubt commended themselves to many because of the theory that under them the right and power of the third party at interest in all such controversies, viz: the public, could and would be more effectively asserted. There is reason to believe, however, that public opinion based on the wider public

interest will find opportunity to assert itself under almost any plan that may be adopted. Neither side will ever be able to forget that in the long run it depends for support on measures that commend themselves to the public as fair to all concerned, and that any course which neglects the public interest is sure eventually to provoke a further assertion of the public power.

The Sub-Committee, in the statement above referred to is careful to say that "it will, of course, be understood that neither the American Bar Association nor our Committee nor any group with whom we have conferred is committed to anything in the way of legislation. We are endeavoring only—we hope in a sensible and practical way—to perform an important public service in a field in which the organized bar of the country, in cooperation with other organized bodies and the public generally, may be of assistance, and in which we hope to develop American law along lines of sound American public opinion."

GENERAL PERSHING AND JUDGE DILLON

Two articles in this issue tend to reinforce the theory that great ability is general in its nature and that the direction which it takes is largely a matter of circumstances. General Pershing started out to be a lawyer and few doubt that had he continued in the profession, he would have achieved success. Judge Dillon started out as a physician, then changed his profession and became a lawyer of marked distinction. It is certainly no groundless surmise that had he continued to practice medicine the capacity which gave him eminence as a lawyer would have assured him success in the profession he first chose.

The same theory explains why so many men who have shown themselves successful lawyers have passed over to executive positions in important industries and enterprises and have there shown marked fitness for new tasks. Beyond question their legal training and experience with men and affairs proved of great assistance to them in more purely business pursuits. But the ability which they had was not inherently of so specialized a character as to unfit them to apply it to other fields. Of course, one can not so easily transfer himself from one profession to another, since the technique of the new pursuit can not be dispensed with. But there is plenty of evidence that with able men, in the vast majority of cases, it is merely this technique and not a lack of the adaptability of their capacity which stands in the way.

Mr. Hubbard's observation that Judge Dillon found his medical training of benefit to him in the practice of law brings up another interesting and more familiar point. He says that it enabled him to live and order his life so as to maintain himself in health to a ripe old age. It would be strange if it did not aid him in many other ways. Aside from the value of all intellectual training, there is little information, scientific or otherwise, that comes amiss to the lawyer. If the occasion does not arise for its immediate application in the trial of cases or the conduct of a client's affairs, at least it helps to give him greater breadth of view. Incidentally, it is a realization of the value of a broader culture and understanding of things that is at the basis of many of the current suggestions for improvement in law school curricula and methods, particularly in relation to the other departments of the universities.

The converse of the above is no doubt equally true. There are probably few men who have studied law, or practiced law for awhile and then changed to some other pursuit, who have not found the legal information or training of great value. It would be hard to think of an occupation today in which the intellectual discipline of even a short study of law would be found wholly useless. And whatever exact information happened to be acquired in the process, or whatever better methods of approach to problems was assimilated, would be fairly certain to come in very conveniently at some time or other. The occupations are certainly liberally sprinkled with men who started out to study law and did study it for a while. Seldom indeed does one of them fail to state, on inquiry, that what little he learned has been a help to him on many occasions.

In brief, to such an extent is law a part of the political, social and economic life in any organized society, that we may say that it is at least one professional study that can never be regarded as wasted, whether the student follow the profession or not. In a society like ours, a certain acquaintance with our legal system really ought to be regarded as a part of a liberal education. And if one acquires this under the mistaken assumption that he is going to practice law, he is the gainer in any event.

INTERNATIONAL RADIOTELEGRAPH CONFERENCE

Convention and Regulations for Rapidly Growing World Radio Traffic Signed After Seven Weeks of Deliberation — International Allocation of Wave Lengths Outstanding Achievement of Conference—Private vs. Public Control—Status of Amateurs—Compulsory Arbitration Approved

By Howard S. Le Roy
Member of the Washington, D. C. Bar

THE Third International Radiotelegraph Conference closed on November 25th with the signing of the Washington Radiotelegraphic Convention and Regulations. The purpose of this Conference was a more orderly regulation of rapidly growing world radio traffic. The vast expansion in the application of the radio art since the London Radiotelegraph Conference of 1912 furnished problems of radio traffic congestion as acute as those we wrestle with daily on our urban highways. The casualties of collision on the highways have their analogies in the interference incidental to the congestion in the international ether channels, or the "Faraday Flux," as one eminent scientist has been pleased to describe the transmitting media for radio impulses.

The primary problem before the Conference was one of international regulatory legislation. Participating in this legislative task were the properly accredited representatives of seventy-nine contracting Administrations together with the representatives of international organizations and private companies aggregating three hundred and seventy-eight individuals, speaking more than twenty different languages. To these normal barriers of nationality and language, common to any international legislative body, were added the difficulties arising from a highly technical subject matter in an art still making amazing strides and therefore likely to be stunted in its normal development if saddled with a too rigid regulatory code.

The painstaking preparatory work for the Conference was planned and carried out jointly by the State Department and the Department of Commerce for many months prior to the opening session of the Conference. This work included: The extending of invitations to attend the Washington Conference to all powers recognized by the United States and signatory to or adhering to the London Convention of 1912; the formulation and submission to the Berne Bureau for compilation and delivery to all contracting powers of the American proposals for the modifications of the provisions of the London Convention; the classification, translation and publication of the resulting one thousand seven hundred and fifty proposals in the Berne Bureau Book of Proposals comprising over six hundred pages.

The immediate work of preparation began with the naming of the American Delegation early last summer. The personnel of the delegation designated by President Coolidge was broadly representative of Governmental and private interests and included:

Honorable Herbert Hoover, Secretary of Commerce and Chairman of the American Delegation; Judge Stephen B. Davis, former Solicitor of the Department of Commerce; Senator James E. Watson, Chairman of the Interstate Commerce Committee of the Senate; Senator Ellison D. Smith, senior minority member of the Interstate Commerce Committee of the Senate; Honorable Wallace H. White, Jr., Sponsor of the Federal Radio Act and now Chairman of House Committee on Merchant Marine and Fisheries; the late Admiral W. H. G. Bullard, Chairman of the Federal Radio Commission; Honorable William R. Castle, Assistant Secretary of State; William R. Vallance, Assistant to the Solicitor of the Department of State; Major General Charles McK. Saltzman, Chief of the Signal Corps U. S. Army; Captain Thomas T. Craven, Director of Naval Communications; W. D. Terrell, Chief of the Radio Division of the Department of Commerce; Owen D. Young, Chairman of the Board of the Radio Corporation of America and the General Electric Company; Colonel Samuel Reber, Director of Traffic Production of the Radio Corporation of America; John Beaver White, Chairman of the unofficial delegation of the United States at the Paris Telegraph Conference of 1925; and Professor A. E. Kennelly of the Electrical Engineering Department of Harvard University.

Following the appointment of the American delegates an executive organization was set up with the appointment of Colonel E. D. Peek as chief executive officer and Mr. Laurens E. Whittemore as Secretary to the American Delegation, charged with the Coordination of the work of the American Delegation. Committees were organized for the purpose of discussing the position to be taken by the American Delegation on the hundreds of proposals. The personnel of each committee included certain of the American delegates assisted by technical advisers from the interested Departments and the representatives and experts of the private communication companies. These committees were in daily session for many weeks prior to the arrival of the foreign delegations and the formal opening of the Conference. For some time before the assembling of the Conference the late M. Etienne, the Director of the International Telegraph Bureau at Berne, Switzerland, was on the scene organizing the work of his office as Secretary General of the Conference. M. Etienne was stricken with a heart attack and died while on shipboard on his way back to Berne after the close of the Conference.

The opening session of the Conference was called to order by Honorable Herbert Hoover, Chairman of the American Delegation, at 3:00 P. M. on October 4th in the Great Assembly Hall of the United States Chamber of Commerce Building.

President Coolidge gave the opening address of welcome to the Delegates. Mr. Hoover was unanimously elected President of the Conference, and Judge Stephen B. Davis was elected Vice President. The rules for the internal organization of the Conference were presented, discussed and adopted. The only point on which any discussion arose was the question of language. French has always been the official language of the International Radio Conferences. Some delegates felt that English should be made equally official with French. In recent years there has been a marked tendency to place English on a parity with French in negotiating international agreements. Since 1920 there have been about twenty international agreements stipulating that English and French should be equally authentic and official. There were many precedents on which the American Delegation might have rested in pressing for an official use of the English language. This situation was met, however, with the understanding that, while French should remain the official language, debate and discussion might be carried on in either French or English with immediate translation by interpreters from one language to the other. All proceedings in the plenary sessions and the meetings of the principal committees were carried on in accordance with this compromise arrangement.

The functional organization of the Conference was similar to that of other international assemblies. The executive work of the Conference was carried on by M. Etienne, Secretary General of the Conference, with his secretarial staff, under the direction of the President of the Conference. The subject matter embodied in the hundreds of proposals was assigned to appropriate committees for detailed consideration. The committees reported back to the plenary sessions the provisions of the new convention and regulations as they were drafted into final form for adoption by the Conference.

There were in all eight plenary sessions of the Conference. In these sessions, including the largely formal opening and closing sessions, there were two readings, discussion and adoption and signature of the new convention and two sets of appended regulations comprising some twenty-six thousand words. This constituted the legislative work of the Conference, completed in a brief period of seven weeks, involving the careful consideration of some two thousand proposals by the ten major committees, composed of the hundreds of representatives of the contracting powers and the private communication companies.

Much of the work was necessarily of a highly technical character and of little direct interest to the general public. There were, however, some problems raising broad questions of policy of interest to American business in the international field.

Private vs. Public Control

The American Delegation, at the outset, knew that it would be in disagreement with the rest of the Conference on some points growing out of fundamental differences in policy as between government and private control of radio. It therefore included under Proposal 3 in the Book of Proposals a succinct statement covering the American position in favor of private control and suggesting a method of coordinating the American position with the prevailing policy in favor of government control. Most of the countries of the world conduct their communications as Government monopolies. In the United States, however, it has been the traditional policy to allow private companies a maximum of initiative and freedom in carrying on and developing national communications commensurate with an adequate protection of the public interests. It has been largely due to this traditional policy of private operation and control that the United States has never signed or adhered to the International Telegraph Convention, negotiated at St. Petersburg in 1875. The Regulations annexed to this Convention were revised at the Telegraph Conference in Paris in 1925. The growing competition between the Radio Companies and the Cable Companies in the handling of trans-oceanic communications also made it impolitic for the United States to agree to the proposals of other countries providing for a wholesale incorporation by reference of many regulatory provisions of the International Telegraph Convention. This sweeping incorporation of the Telegraph Convention would have had the effect of subjecting the Radio Companies to a degree of regulation which could not be imposed upon the Cable Companies by reason of the fact that while the United States has never been a party to the International Telegraph Convention it is a party to the International Radio Convention. There were several other points of regulation, such as the fixing of rates and specification of services on which the American Delegation did not agree with the foreign administrations because of the above fundamental distinction between public and private control of communication facilities. On most of these points the Canadian Delegation voted with the American Delegation rather than with the British Delegation because of a real community of interest.

These difficulties, which were a matter of considerable concern to the American Delegation during the early weeks of the Conference, were finally removed by the acceptance of the American Proposal No. 3 for the segregation of regulations into two general categories: First, Government regulations to which the United States as a sovereign power could adhere; and, second, Management regulations which related exclusively to a detailed regulation of private companies in which the United States as a Government had no proper interest. This segregation of regulations into two categories was accepted with the tacit understanding that the United States would sign the Government regulations but would not sign the Management regulations, inasmuch as they were in conflict with the traditional policy of the United States for private operation of communications. When the actual segregation of regulations was completed it was found that there were very few falling into the collection of Management regulations as unacceptable to the United States.

The strong position maintained by the American Delegation on this broad question of policy in the early stages of the Conference had at least two salutary effects. First, it dampened the ardor of the European administrations for an intensive and stifling regulation of radio. Second, it aroused in certain countries a lively appreciation of the advantages of freedom from bureaucratic interference in the conduct of business activities which could

be more efficiently handled under private control.

Amalgamation of Radiotelegraph Convention With Telegraph Convention

Another point on which the American and Canadian Delegations found themselves in disagreement with the majority of the Conference was on the question of the amalgamation or merger of the Radiotelegraph Convention with the International Telegraph Convention. This difference also originated in the conflicting policies of public and private administration of communications. In Europe and in most other countries of the world where communications constitute a government monopoly, and the whole system is carried on by the governments themselves irrespective of whether communication is by wire or wireless, there naturally seems to be no sound or logical basis for separating the two systems of communication for regulation by separate international conventions. At the last Telegraph Conference in Paris in 1925, the question of merger arose and was the subject of considerable discussion. Mr. John Beaver White, the chairman of the unofficial delegation of the United States at the Paris Conference, in his report pointed out the overwhelming European opinion in favor of merging the two Conventions. The Paris Conference directed the French Delegation to the Washington Radio Conference to present the matter for an expression of views as to the feasibility of initiating the merger at the next Telegraph Conference in Brussels in 1930. The Washington Conference therefore felt constrained to take some action on the proposal of the Paris Conference. The British Delegation urged that the Washington Radio Conference could not properly adjourn without taking some action on this question submitted by the Paris Telegraph Conference. The result was the adoption of a *voeu* expressing the wish of the majority of the Conference in favor of study of the question whether the two International Conventions should be merged.

It is probable, therefore, that the United States will be forced to meet this issue in the future. Action may be initiated at the Brussels Telegraph Conference in 1930 at which there may be an unofficial American delegation, or action may be taken at the next Radio Telegraph Conference at Madrid in 1932.

Cortina Report

Another troublesome legacy of the Paris Telegraph Conference was the question of action on the Cortina Report on the use of code language. The Paris Conference in 1925 discussed the question of reducing the ten letter code word to five letters but found it impossible to reach a satisfactory agreement. A special Conference on code language was held later at Cortina d'Ampezzo in Italy. After careful study a report was then made in favor of a five letter code word. Great Britain was opposed to the changes proposed in the Cortina Report. The question came before the Washington Conference and a special Committee of the Conference was appointed to act on the Report. Prior to the opening of the Washington Conference considerable interest was manifested in the Cortina Report by large American users of cable service. A hearing on this subject was scheduled by the American Delegation. Among others who appeared in opposition to the proposed changes in the use of code language was Vice President Dawes, representing the Chicago Chamber of Commerce.

The Special Committee appointed by the Conference to act on the Cortina Report decided the first day that action on the Report was not within the province of the Washington Conference, and that it should reconstitute itself as a Special Telegraph Conference for the purpose of acting on the Report. The following day the Committee, after due deliberation, felt it could not organize itself as a special Telegraph Conference. The result was a resolution referring the Report to the next Telegraph Conference at Brussels and requesting the French Administration, as managing head of the Telegraph Union, to take up the matter with the Belgian Government with a view to advancing the date of the Brussels Conference from 1930 to 1928. (Senate, 70th Congress, 1st Session—Executive B, pp. 170, 190.)

Allocation of Wave Lengths

The outstanding achievement of the Washington Conference was the international allocation of wave lengths as set forth in Article 5 of the General Regulations annexed to the Convention. For the first time, the entire range of radio wave lengths, from the highest down to the border of infinity, has been allocated for the use of various international services. This difficult task engaged the attention of the Technical Committee and its sub-committees for a period of six weeks. It involved a unanimous agreement by technical experts from the four corners of the world in allocating the long and short waves, the low and high frequencies to the services to which they were best suited. The agreement, as finally reached, allocates frequency bands from ten to sixty thousand Kilocycles (30,000 to 5 meters). The spectrum was divided into sixty bands in which all ship, aircraft, land, broadcasting, amateur and experimental stations will operate in accordance with their allotments. Among the various services, ship and shore stations receive primary consideration because of their relation to safety of life at sea. However, younger services, such as aircraft radio and radio beacon and direction finding, as well as broadcasting, are recognized. The allocated scheme is not rigid except as it may involve international interference. Any signatory power may operate as it pleases through the whole gamut of frequencies provided it does not cause interference with the assigned international services.

The chairman of the Technical Commtitee was General Ferrié of the French Delegation. At the time of the adoption of the world wave table in the seventh plenary session of the Conference, General Saltzman, the American delegate on the Committee, called attention to the coincidence that the international allocation of wave lengths, which had been reached under the able direction of General Ferrié, was adopted by the Conference on the French delegate's birthday. Amid general applause, the delegates arose and stood in honor of this distinguished scientist and popular member of the French Delegation.

Mr. Hoover, in addressing the closing session of the Conference, pointed out that a basic solution

had been achieved by grouping the channels for radio communication for essential types of international services, leaving all nations free to engage in any of these services on the appropriate traffic lanes.

Amateurs

A question closely related to the general allocaion problem was the status of the amateur in the international field. The American amateur is now officially recognized in an international convention. This special recognition was due largely to the strong position taken by the American Delegation and the American Radio Relay League. It is estimated that out of twenty-five thousand amateurs in the world, seventeen thousand are located in the United States. The majority of the European Governments were in favor of a complete and minute regulation of radio activities which would have resulted in the practical elimination of the amateur operator. The American Delegation, recognizing the pioneering service of the amateur in the recent development of the art, especially in the field of the short wave length, vigorously championed his cause.

Mr. K. B. Warner, representative of the American Radio Relay League, in speaking of the amateur assignments, regretted that restrictions were imposed, but he spoke in highest terms of the support received from the American Delegation.

Arbitration

Article 18 of the Convention provides for compulsory arbitration. This question was vigorously debated in the Convention Committee of the Conference. The London Convention of 1912 provided for optional arbitration of all disputes arising under the terms of the Convention. Certain proposals submitted by France and the smaller countries for the modification of the London Convention provided for compulsory arbitration. The discussion of this question in the sub-committee of the Convention Committee immediately disclosed a difference of opinion with the usual alignment of international conferences as between the small and the large countries. The vote in the sub-committee was decisive in favor of compulsory arbitration. Practically all the smaller countries favored it while the opposition arose from Great Britain and Japan. The American Delegation for a time hesitated in taking a position on this question in view of the traditional attitude of the United States against compulsory arbitration. This opposition on the part of the United States has arisen from the attitude of the Senate rather than from that of the Executive Department.

In general in the United States, treaties providing for compulsory arbitration have failed of ratification by the Senate or have been so amended by the Senate as to be unacceptable to the President.

After the decisive vote in the sub-committee of the Convention Committee the question arose a few days later in the full Convention Committee with the same general alignment of powers with the exception that the American Delegation voted in favor of compulsory arbitration. The fight against compulsory arbitration was carried to the floor of the Conference in its seventh plenary session by the British and Japanese Delegations where the provision was overwhelmingly adopted on a vote of forty-three to seven. The opposition was led by Colonel E. T. Purvis, Chief Engineer of the British Post Office and Chief of the British Delegation. Colonel Purvis, in seeking to amend Article 18 to permit optional arbitration, contended that radio services are not suitable for compulsory arbitration. The chief support for arbitration came from the American nations, notably Argentina, Uruguay, Venezuela, Peru, and Mexico, as well as from China and The Netherlands.

It is possible that this provision of the new Convention will be the subject of some debate by the Senate at the time of ratification. It is difficult, however, to find any sound ground for opposition to this provision, since the Convention deals with purely technical subjects and it is very difficult to imagine any case in which disputes springing from it would involve the independence or honor of the United States.

Voting

The question of votes was the one question resulting in an insurmountable deadlock. It frequently happens that the question of voting takes on a significance altogether out of proportion to its practical importance. The question of votes always raises questions of national dignity. As a practical matter, the question of votes seldom carries any great weight in the actual discussion of problems before a conference. This is due to the fact that in most instances the problems which cause divergent points of view are thoroughly debated and conflicting view points are accommodated before the issue is allow to reach a vote.

In the London Conference of 1912 the question of voting was argued until the last day of the Conference. The difficulty in the Washington Conference arose out of the British proposal (100 in the Book of Proposals) providing for the elimination of the maximum limitation of six votes. Great Britain was under the necessity of making this proposal by reason of the independent national status of the Irish Free State acquired since the London Conference in 1912. The Irish Free State had been accorded a vote in the last International Postal Conference at Stockholm in 1924. The six British votes, however, had already been specifically allocated in 1912 among Great Britain, her then existing self-governing dominions and British India. Great Britain was therefore in a position where she could not re-allocate her six votes in such a way as to give a vote to the Irish Free State, and in consequence she was forced to fight for the elimination of the maximum limitation of six votes in the Washington Conference. The discussion therefore of the British proposal immediately caused an alignment between the large plural vote powers and the small single vote powers. Numerous suggestions were made with a view to breaking the deadlock without success. The result was the omission from the Washington Convention of any provision relating to voting. The new Convention set no limit upon the signatures of any delegation. A precautionary declaration was inserted in the minutes of the plenary session, however, stating "that these two questions were distinct and that consequently the manner in which the signature would be made had no relation to the question of

votes." (Senate, 70th Congress, 1st Session, Executive B, p. 235.)

The question of votes also arose in an early plenary session of the Conference with respect to the number of votes to be enjoyed by Germany. At the London Conference Germany was one of the plural vote powers, and, like the rest of such powers, the five additional votes were awarded on the basis of colonies. Germany, having lost her colonies after the war, objected to paying to the International Telegraph Bureau at Berne the proportionate share of expenses of such Bureau for her lost colonies. Nevertheless, at the Washington Conference, Germany requested that she be allowed her former number of votes, irrespective of the loss of her colonies. This situation was adjusted by an arrangement whereby Germany, for the purpose of the Washington Conference alone, was allowed her full quota of six votes. This arrangement was subject to the unanimous approval of the other powers at the Conference and was limited exclusively to the Washington Conference without constituting any precedent for future Conferences.

The Committee of the Conference on International Code of Signals formulated a report proposing certain important changes in the International Code of Signals. This work of revision was initiated on proposals of the British Government. The report was transmitted to the Secretary of State of the United States as the convening government for the purpose of bringing the recommendations to the attention of the interested governments. (Senate, 70th Congress, 1st Session, Executive B, pp. 216, 17.)

The Washington Conference legislated in certain fields not touched by earlier Conferences. This applied particularly to regulations dealing with radio beacons and aviation. In the allocation of wave lengths radio beacons were assigned 950-1050 meter wave lengths. The 900 meter wave is the international calling wave for air services while the 850-950 meter wave lengths are exclusively allocated to the Air mobile services. The air services were fully represented on the American Delegation. Mr. MacCracken, Assistant Secretary of Commerce in charge of aviation, assigned expert personnel from his Department for special work with the Conference.

Entertainment

The arrangement of the numerous social events for the delegates was handled by the Reception Committee. The formulation of an adequate entertainment program for a Conference involves a tremendous amount of detail work, and contributes directly to the advancement of national interests. Many of the delegates were visiting the United States for the first time and they were, therefore, eager to avail themselves of every opportunity to learn American ways of conducting business, particularly the communication business. Luncheon was served each day to the Conference at the Carlton Hotel. Every day between four and five in the afternoon tea was served in the patio of the United States Chamber of Commerce Building. Each of these daily events afforded an opportunity for social contact and a direct and informal exchange of views. They proved most important in accommodating divergent views.

American private communication companies also contributed generously to the entertainment of the Conference. October 14th-16th the Conference was taken to Riverdale, Long Island, on special trains by the Radio Corporation of America, and from that point enjoyed a motor bus tour of inspection of the various radio plants on Long Island as well as a delightful dinner given at the Plaza Hotel in New York with a typical broadcasting program. Two weeks later, on October 29th-November 1st, the Conference journeyed to New York as the guests of the American Telephone and Telegraph Company, Postal Telegraph Company and the Commercial Cable Company. During this three-day trip the delegates were entertained at a dinner at the Waldorf-Astoria by the Postal Telegraph Company and the Commercial Cable Company. On the following Sunday afternoon Mr. Clarence A. Mackay entertained the Conference at his estate at Roslyn, Long Island, and on Monday the delegates were entertained by the American Telephone and Telegraph Company on a round of inspection covering the Bell Telephone Laboratories and other points of special interest in the American Telephone and Telegraph system. After the dinner at the Waldorf-Astoria on Monday evening a demonstration of Movietone and Television was given at the Bell Telephone Laboratories and the delegates were permitted to talk over the Long Distance circuit to London. The entertainment of the Conference was concluded with a dinner by the American Delegation at the Mayflower Hotel on Saturday, November 19th. On this occasion Mr. Hoover, as Chairman of the American Delegation, emphasized the ease with which conflicting viewpoints were adjusted in dealing with tangible scientific problems devoid of all emotional and political significance.

As a welcome interruption in the round of protracted committee meetings there were several short motor bus trips to points of interest in and around Washington, such as the Naval Academy at Annapolis, Mt. Vernon, and the Bureau of Standards.

Conclusion

During the deliberations of the Conference, extending over seven weeks, discussions were held and the action was formulated on many projects which were of small popular interest but of great importance in the scientific advancement of international communications. For the purpose of minimizing interference, the Convention provides that, twelve months after adoption, no more spark sets shall be installed, and that existing sets shall be replaced by modern equipment. The Convention also (Article 13 Bis) provides for the organization of an international consultative committee for the purpose of studying technical questions related to international radio communication.

After the adoption of the final articles of the Convention, the Conference voted to accept the invitation of the Government of Spain to hold the Fourth International Radiotelegraph Conference in Madrid in 1932.

In accordance with the terms of the new Convention, the original as signed will be deposited in the archives of the Department of State, and a copy will be sent to each of the interested Governments. The Washington Convention will go into force on January 1, 1929, irrespective of whether it has then been ratified by all the signatory powers.

REVIEW OF RECENT SUPREME COURT DECISIONS

Application of Full Faith and Credit Provision of Constitution to Curious State of Facts Disclosed by Washington Case—Limitation of Permission to Sue for Damages Caused by Railroads While Under Government Control—Compelling Carrier to Connect With Private Tracks—Failure to Remove Snow and Ice from Railroad Platforms Not Negligence as to Station Agents Living on Premises and Familiar With Conditions—Judgment of State Court for Damages Suffered by One Engaged in Interstate Commerce Subject to Review by Supreme Court on Certiorari and Principles of Law as Interpreted by It Will Control Case—Probation Powers.

By Edgar Bronson Tolman

THE really vital point of the decision in *Mellon vs. Ark., Land and Lumber Co.* No. 73, reviewed in this issue, is the statement that the substitution of Davis for Payne "was not the correction of an error in the name of the defendant but the bringing in of a different defendant and was the commencement of a new and independent proceeding."

A similar question has frequently arisen in determining whether or not an amendment after the statute of limitations had run, is a mere correction of an error or the bringing of a new suit. Judges are apt to range themselves on one side or another of the line according to the importance which they attach to formal rules and the strictness with which they construe them. There have been some very outrageous decisions by which a just claim was held to be barred by the statute because of some trifling defect in the pleadings. But on the whole there has been a tendency to regard an amendment as the mere correction of an error in the original statement of the cause of action wherever this could be done. This suit was not a suit against Payne nor a suit against Davis, but it was a suit against the agent of the United States designated by the President for the purpose of suit, and the holding was that a suit which could not be brought at all except by permission of the Government must be brought against the very person designated.

This comment is not intended to criticize the conclusion reached by the court but to make that decision clear in its application to other cases.

In *Railroad vs. Wells,* No. 39, also reviewed, the point of interest is that where one has recovered a judgment in the state court and it has been finally affirmed by the Supreme Court of that state, it is subject to review and certiorari by the Supreme Court of the United States, and so far as the law is concerned the decision of the State Supreme Court amounts to nothing, but liability will be determined according to federal law.

Here is a paradox. In *Roche vs. McDonald,* No. 38, (see below), a judgment is recovered in a Superior Court of Washington and is assigned to another who brings a suit upon the Washington judgment in an Oregon court. The Washington judgment becomes barred by the Washington statute of limitations, but the bar was not pleaded and judgment was rendered in Oregon on the Washington judgment. Suit is then brought in Washington on the Oregon judgment based on the barred Washington judgment and the right of recovery is sustained on the doctrine of "full faith and credit."

Constitutional Law—Foreign Judgments—Full Faith and Credit

The judgment of a state court which duly acquired jurisdiction of the parties and subject matter involved in a suit is valid in every other state although the cause of action on which it was rendered might have been successfully defended against in the state in which it arose, and although it was based on a misapprehension of the law of such other state.

Roche v. McDonald, Adv. Op. 149; Sup. Ct. Rep., Vol. 48, p. 142.

In June, 1918, one Dart obtained a judgment against McDonald in Washington for $12,500 and thereafter assigned it to Roche. In March, 1924, Roche sued on this judgment in Oregon where McDonald was temporarily employed. The action was begun by personal service of a summons and McDonald appeared and demurred. The demurrer was overruled and judgment was entered upon failure of the defendant to plead further or answer. This judgment was rendered in October, 1924, over six years after the Washington judgment was rendered.

Shortly afterwards Roche brought action against McDonald in Washington on the Oregon judgment. McDonald answered denying the validity of the Oregon judgment and relied upon a Washington statute which provided that after six years from the rendition of judgment against a debtor it should cease to be a charge against the debtor and no suit should be had extending its duration or continuing it in force beyond such six years. Roche replied to this by pleading the full faith and credit clause of the Constitution.

The Washington courts upheld the defendant's contention upon the ground that the Oregon judgment was a nullity because it was entered more than six years after the original Washington judgment was rendered. The reasoning advanced in support of this was that if a judgment similar to the Oregon judgment had been rendered in Washington it would have been without force and effect, and consequently, despite the full faith and credit clause, the Washington courts are not compelled to enforce the Oregon judgment literally but may examine into the basis upon which it

rests, just as they would if the action were based upon a Washington judgment.

This view was rejected, however, by the Supreme Court of the United States and the contention of the plaintiff was held sound. MR. JUSTICE SANFORD dedelivered the opinion and first stated the settled rule in the following terms:

> It is settled by repeated decisions of this Court that the full faith and credit clause of the Constitution requires that the judgment of a State court which had jurisdiction of the parties and the subject matter in suit, shall be given in the courts of every other State the same credit, validity and effect which it has in the State where it was rendered, and be equally conclusive upon the merits; and that only such defenses as would be good to a suit thereon in that State can be relied on in the courts of any other State. This rule is applicable where a judgment in one State is based upon a cause of action which arose in the State in which it is sought to be enforced, as well as in other cases; and the judgment, if valid where rendered, must be enforced in such other State although repugnant to its own statutes.

The learned Justice then reviewed *Christmas v. Russell, Fauntleroy v. Lum*, and *Kenney v. Supreme Lodge* to show that the rule as applied to this case sustained the contention of the plaintiff. *Fauntleroy v. Lum* was particularly relied upon. In that case the cause of action arose in Mississippi out of a gambling contract in cotton futures. Under the laws of that state such a contract was unenforcible, and dealing in futures was a misdemeanor. But the controversy was arbitrated and an award made to the plaintiff. He later sued the defendant in Missouri while the latter was in that state temporarily, and obtained a judgment. On this judgment he afterwards brought an action in Mississippi and it was held that under the full faith and credit clause such an action could be maintained.

> The Fauntleroy case is directly controlling here. The court of Oregon had jurisdiction of the parties and of the subject-matter of the suit. Its judgment was valid and conclusive in that State. The objection made to enforcement of that judgment in Washington is, in substance, that it must there be denied validity because it contravenes the Washington statute and would have been void if rendered in a court of Washington; that is, in effect, that it was based upon an error of law. It cannot be impeached upon that ground. If McDonald desired to rely upon the Washington statute as a protection from any judgment that would extend the force of the Washington judgment beyond six years from its rendition, he should have set up that statute in the court of Oregon and submitted to that court the question of its construction and effect. And even if this had been done, he could not thereafter have impeached the validity of the judgment because of a misapprehension of the Washington law. In short, the Oregon judgment, being valid and conclusive between the parties in that State, was equally conclusive in the courts of Washington, and under the full faith and credit clause should have been enforced by them.

The case was argued by Mr. Lucius G. Nash for plaintiff in error and by Mr. W. G. Graves for defendant in error.

Federal Transportation Act

The permission which the government has given to sue for damages caused by railroads while under its control is limited to suits brought within the period of the statute of limitations against the agent designated for that purpose. A suit against a former agent is not a compliance with the terms of consent and an error in bringing suit against such former agent may not be cured by amendment substituting the proper agent, after the statute of limitations has run.

Mellon v. Arkansas Land & Lumber Co., Adv. Op. 154; Sup. Ct. Rep., Vol. 48, p. 150.

A cause of action accrued in favor of the plaintiff, Arkansas Land & Lumber Company, on July 23, 1918, for misdelivery of a carload of lumber. This lumber had been shipped by the plaintiff over two carriers while they were under Federal control. For causes of action so accruing the Transportation Act allowed an action against "an agent designated by the President for such purpose . . . within the periods of limitation now prescribed by State or Federal statutes." The Arkansas statute of limitations for actions of this sort was three years.

After the termination of Federal control the plaintiff brought an action in an Arkansas circuit court against John Barton Payne Director General of the railroads alleging that he was the agent designated by the President for such purpose.

At that time Payne was not the agent designated, but had resigned over three months before and James C. Davis had been appointed in his stead. This fact the defendant pleaded in abatement and the trial court sustained the plea, but permitted Davis to be substituted as defendant in October, 1921. Davis then appeared and pleaded in abatement that he had been substituted after the statute of limitations had run. The trial court sustained the plea and dismissed the suit. But the Arkansas Supreme Court reversed the judgment on the ground that the substitution of Davis was not a new action but merely an amendment correcting the defendant's name in furtherance of justice. When the cause was remanded the plea was renewed by the defendant and was overruled. Judgment was rendered for the plaintiff. On appeal, brought by Mellon, the succeeding designated agent, the State Supreme Court affirmed this judgment. The petitioner then petitioned for certiorari to the Supreme Court of the United States which granted the writ and finally reversed the judgment, MR. JUSTICE SANFORD delivering the opinion. The reasons for the reversal were explained in the following portion of the opinion:

> The United States had not consented to being sued after the termination of Federal control except as provided by Section 206 of the Transportation Act, that is by a suit brought against the Agent designated by the President for such purpose, within the period of limitation prescribed by the State statute. This plainly meant that the suit must be brought within the period of limitation against the person who was the designated Agent and alone had authority to represent the Government. The bringing of the suit against Payne, who was not the designated Agent, was not a compliance with this requirement and brought no representative of the Government before the court. The substitution of Davis, the designated Agent, was not the correction of an error in the name of the defendant, but the bringing in of a different defendant, and was in effect the commencement of a new and independent proceeding against him to enforce the liability of the Government. And, as this substitution, being made more than three years after the cause of action had accrued, was not a compliance with the requirement of the Transportation Act that the action be brought against the designated Agent within the period of limitation prescribed by the State statute, the plea should have been sustained and the suit dismissed.

Mr. J. Q. Mahaffy argued the case for the petitioner and Mr. E. F. McFaddin for the respondent.

Interstate Commerce Commission — Compelling Carrier to Connect With Private Tracks— "Shipper" Defined

Paragraph 22 of §1 of the Interstate Commerce Act does not affect the power of the Commission under paragraph 9 to compel carriers to connect with private tracks of shippers even though under the state law such tracks were considered public tracks because they crossed highways.

Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. United States et al. Adv. Op. 166; Sup. Ct. Rep., Vol. 48, p. 189.

This opinion involved the construction of sections of the Interstate Commerce Act respecting the power of the Commission to compel carriers to make connections with private shippers. J. K. Dering Coal Company, referred to as the Company, built a private track about three and one-half miles long, from its mine to the right of way of the Big Four. It then applied to the Interstate Commerce Commission for an order requiring the Big Four to construct, maintain, and operate switch connections with the carrier's tracks. The mine, track, and proposed connection were all in Illinois. After a hearing the Commission made necessary findings of facts and ordered the connection prayed for, pursuant to paragraph 9 §1 of the Interstate Commerce Act.

That paragraph made the following provisions:

> Any common carrier subject to the provisions of this Act, upon application of . . . any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any . . . private side track which may be constructed to connect with its railroad, which such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; . . .

Then the Big Four applied to the federal district court in Illinois for an injunction to restrain the enforcement of this order. The court, three judges sitting, dismissed the bill without opinion or findings of facts. This appeal was taken under the Urgent Deficiencies Act and §238 of the Judicial Code as amended. On this appeal the judgment of the district court was affirmed in the Supreme Court of the United States, MR. JUSTICE BRANDEIS delivering the opinion.

In this opinion he discussed separately the seven contentions advanced by the Big Four as constituting reversible errors in the ruling of the district court.

The first of these contentions was that the power of the Commission under paragraph 9 to require the construction of a shipper's switch connection built entirely within one state was abrogated by paragraph 22, which was added to §1 of the Interstate Commerce Act by the Transportation Act, 1920. Paragraph 22 contains the following:

> The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State.

It was held that this clause did not apply here, for reasons explained as follows:

> Paragraph 22 in no way affects the power conferred by paragraph 9. By its terms, it operates as a limitation only upon the authority conferred upon the Commission in 1920 by paragraphs 18 to 21. These paragraphs relate to the construction, acquisition, extension and abandonment of a railroad. They deal primarily with rights sought to be exercised by the carrier.

The second contention was that even though the power granted by paragraph 9 was not abrogated by paragraph 22 the present case comes within the requirements of paragraphs 18 to 21 and that the order was void for non-compliance with them. This contention was separable into two parts: first, that enabling the Big Four to reach territory served by another carrier is an extension of lines within the meaning of paragraphs 18; and second, that in forming a possible connection with other railroad lines under an alleged agreement, trains from these other railroads may tap territory now tributary to the Big Four. Both parts of this contention were also rejected. The fallacy in the first part was explained thus:

> This argument proceeds from the same misconception of the purpose of paragraphs 18 to 21 as does the argument discussed above. These paragraphs deal with construction and abandonment on the part of the carrier, not with side tracks built by the shipper. Furthermore the order gave the Big Four no trackage rights over the Coal Company's track. The mere fact that a side track with which a connection is sought extends to an industry located on another railroad does not make the switch connection or the track of the shipper, or both combined, an extension of the railroad within the meaning of paragraphs 18 to 21.

The answer to the second part of the contention was stated in the following:

> The argument is that because of the possibilities of the use of the track by these other carriers, it is an extension within the meaning of paragraph 18. But no such connection has been made or attempted or threatened; and neither the Illinois Commerce Commission nor the Interstate Commerce Commission has authorized such connection or use. If the track is used by the Illinois Central or the Southern Illinois in the manner described, paragraph 20 of section 1 furnishes the appellant with an appropriate remedy.

The contention next dealt with was that the connection here ordered crossed highways which made it a public track under the state law and that hence it was an extension within the meaning of paragraphs 18 to 21. This contention was rejected as unsound because of the powerlessness of the state to curtail the Commission's power. Respecting this the learned Justice said:

> It is true that, under section 45 of the Public Utilities Act of the State, Cahill's Illinois Revised Statutes (1915), Chap. 111a, par. 60, a switch track, though built by an industry and used in connection with it, is a part of the railroad subject to public use. But obviously, a State cannot, in respect to the regulation of interstate commerce, override the will of Congress. The commission was given the authority to compel an interstate carrier to construct a switch connection with a side track built by an industry. The State cannot curtail the Commission's power over interstate commerce by denying it authority to compel a connection with such a side track unless the circumstances are such that public necessity and convenience require an extension of the railroad under paragraphs 18 to 21.

The contention next considered was to the effect that the Coal Company was estopped by proceedings in the state courts from denying that the proposed connection was an extension under paragraphs 18 to 21. This alleged estoppel was urged on the ground that the Supreme Court of Illinois had held void an order of the Illinois Commerce Commission permitting the building of the tracks because they were an extension of the carrier's lines, and that the Interstate Commerce Commission had sole jurisdiction over them. This contention was disposed of in the following language of the opinion:

> The Big Four, having thus convinced the State court that the order of the State commission was void because the matter is one within the jurisdiction of the Federal commission, insists now that the latter cannot act because of the State decision. The judgment of the high-

est court of the State is, of course, conclusive in so far as it declares that the State commission exceeded its statutory powers. But, obviously, neither the legislature nor the courts of a State can limit the power of the Interstate Commerce Commission to compel connections with private side tracks. The declaration of the State court that the track which the Federal authority determines is private, shall be deemed public, can not affect the validity of the order of the Interstate Commerce Commission. If it could, construction by the railroad of the switch connection with the shipper's track would not be compellable under either State or Federal law.

The fifth contention of the Big Four was that the Coal Company is not a "shipper" within the meaning of paragraph 9, because it already has a connection with the Illinois Central. This was rejected briefly with the observation that there is no foundation for such a limitation in the general language of paragraph 9.

Next in order the sixth contention was stated and disposed of as follows:

It is contended that the coal company is not a shipper on the Big Four, within the meaning of paragraph 9, because up to the time of the application to the Commission it had not actually shipped coal by this route over the Big Four. The argument is that no one, unless he is already a shipper at the time of the application to the Commission, is entitled to a switch connection. Congress imposed no such limitation. It safeguarded the expenditures of the carrier by other provisions. It limited the railroad's obligation to the building of the switch connection, leaving the burden of building the side track upon the shipper.

The final ground urged by the Big Four was that by the law of Illinois, as previously stated, this track was a public track; that as such, its building was an *ultra vires* act on the part of the Coal Company; and consequently that whether public or private, it was not a "private side track which may be constructed" within the meaning of paragraph 9. With reference to this contention the learned Justice said:

Congress obviously did not impose upon the Interstate Commerce Commission the duty of determining, before issuing an order, whether or not a private track actually in existence had been constructed by the shipper ultra vires. Whether in so acting, the shipper transgressed powers conferred upon it by the State is a question which cannot be raised in this suit. If the State concludes to question the legality of the shipper's acts, it must do so in a direct proceeding instituted by it for that purpose.

The opinion was concluded with the following observations concerning the importance and usefulness of opinions by the trial courts as assistance to litigants and appellate courts in disposing of litigation without unnecessary labor:

The District Court properly refused to grant a stay of the Commission's order pending an appeal. It is difficult to believe that the appeal would have been persisted in, if that court had delivered an opinion setting forth its reasons for dismissing the bill. Where the trial court omits to state the grounds of its decision, the appellate court is denied an important aid in the consideration of the case; and the defeated party is often unable to determine whether the case presents a question worthy of consideration by the appellate court. Thus, both the litigants and this court are subjected to unnecessary labor.

The case was argued by Mr. George B. Gillespie for the appellant, by Mr. Blackburn Esterline for the United States, and by Mr. Patrick J. Farrell for the Commission.

Federal Employers' Liability Act

An interstate carrier is liable to its employees for injuries caused by defects due to its negligence in the maintenance of its station platforms, but failure to remove snow and ice from such platforms is not negligence as to its station agents who live on and are familiar with the condition of the premises.

Missouri Pacific R. R. Co. v. Aeby, Adv. Op. 159; Sup. Ct. Rep., Vol. 48, p. 177.

The petitioner was employed as station agent at Magness, Arkansas, by the railroad company, the respondent, which does interstate business. She recovered a judgment in a state court in Missouri for an injury while so employed. This judgment was affirmed by the Missouri Supreme Court which held that the Federal Employers' Liability Act applied to a case of the kind presented. Certiorari was granted by the Supreme Court of the United States.

The injury sustained was the result of a fall on the station platform early one morning before daylight, at a time when the platform was covered with ice and snow which had fallen during the night. The petitioner had gone to the platform with another woman to move a truck to a place near the track. A lamp and lantern had previously been lighted, but so far as was shown these were left inside so that they shed no light on the platform. While outside for this purpose the respondent tripped on something rough, slipped, and fell. The injury sued for resulted from this fall.

The petitioner contended that on these facts the Federal Act did not apply, that no negligence on the part of the railroad was shown, that the respondent had assumed the risk, and that she was injured as the result solely of her own negligence.

The Act provided that a carrier was to be held liable for injuries to employees resulting from any defect or insufficiency due to its negligence in "its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment." Under this language the Supreme Court of the United States held, in an opinion delivered by MR. JUSTICE BUTLER, that the state court had rightly held that the Act applied to this case.

The language is broad and includes things and places furnished by carriers to be used by their employes in the performance of their work. The platform was intended to be and was used by the respondent to do station work. Having regard to the beneficent purposes of the Act, it would be unreasonable to hold that when so used a station platform is not covered by the word "works" in the above quoted provision. The Supreme Court rightly held that the clause applied.

But it was held that there was not sufficient evidence to warrant a recovery on the theory of negligence, and on this ground the judgment was reversed:

This case is governed by the Act and the applicable principles of the common law as established and applied in the Federal courts. There is no liability in the absence of negligence on the part of the carrier. Its duty in respect of the platform did not make petitioner an insurer of respondent's safety; there was no guaranty that the place would be absolutely safe. The measure of duty in such cases is reasonable care having regard to the circumstances. The petitioner was not required to have any particular kind of platform or to maintain it in the safest and best possible condition. No employment is free from danger. Fault or negligence on the part of the petitioner may not be inferred from the mere fact that the respondent fell and was hurt. She knew that it had rained and that the place was covered with ice and snow. Her knowledge of the situation and of whatever danger existed was at least equal to that chargeable against the petitioner. Petitioner was not required to give her warning. It is a matter of common knowledge that almost everywhere there are to be found in public ways and on private grounds numerous places in general use by pedestrians that in similar weather are not materially unlike the place where respondent fell. Under the circumstances, it cannot reasonably be held that failure of petitioner to remove the

snow and ice violated any duty owed to her. The obligation in respect of station platforms and the like owed by carriers to their passengers or to others coming upon their premises for the transaction of business is greater than that due their employes accustomed to work thereon. The reason is that the latter, familiar with the situation, are deemed voluntarily to take the risk of known conditions and dangers. The facts of this case, when taken most favorably to the respondent, are not sufficient to sustain a finding that petitioner failed in any duty owed to her.

The case was argued by Mr. Merritt U. Hayden for the petitioner and by Mr. Patrick H. Cullen for the respondent.

Federal Employers' Liability Act

The judgment of a state court for damages suffered by one engaged in interstate commerce is subject to review by the United States Supreme court on certiorari, and the principles of law as interpreted by the latter will control the case.

Gulf, Mobile & Northern R. R. Co. v. Wells, Adv. Op. 152; Sup. Ct. Rep., Vol. 48, p. 151.

The plaintiff was employed as a brakeman by the Railroad Company which was an interstate carrier. He sued in a state court in Mississippi to recover for an injury sustained while so employed, due to negligence of the engineer. At the trial the defendant moved for a directed verdict at the conclusion of the evidence, but this was denied and the jury returned a verdict for the plaintiff. Judgment on this verdict was affirmed by the Supreme Court of Mississippi and the carrier was granted a writ of certiorari.

It was undisputed that the plaintiff was employed in interstate commerce and that the case was governed by the Federal Employers' Liability Act. The question presented was whether the evidence warranted a recovery under the principles of law interpreted by the federal courts. To determine this it was necessary to review the evidence.

The evidence given by the plaintiff was that just after he gave a signal to the fireman to go ahead he ran back to throw a switch and then back to the train which by that time was moving at about eight or ten miles an hour. As he attempted to climb on the caboose he stepped on a lump of coal, turned his foot and went down and the engine gave an unusual jerk thus causing the injury. He further testified that this unusual jerk was of a kind he had seen on through freight trains but never on local freights.

The other members of the crew testified that it was not the duty of the engineer to look out for men on the other side of the train where the plaintiff was; that he did not know where the plaintiff was; that he started in the ordinary way doing nothing to cause a lurch or jerk; and that at the time of the injury there was no unusual lurch or jerk of the train. The evidence of the crew was not rebutted.

Upon this review of the evidence the Supreme Court of the United States reversed the judgment of the state tribunal, MR. JUSTICE SANFORD delivering the opinion. The basis for this reversal was explained in the following terms:

> It is urged here in behalf of Wells that, despite this evidence, the question of the engineer's negligence was properly submitted to the jury because of an inference to be drawn from Wells' own statement that "the engine gave an unusual jerk" which was more severe than any he had ever experienced or seen on a local freight train.
>
> We cannot sustain this contention. In the first place, there was no evidence that the engineer knew or should have known that Wells was not on the train, but was attempting to get on it after it had started and was in a situation in which a jerk of the train would be dangerous to him.
>
> Aside from this, Wells' statement that the jerk was given by the engine, was, obviously, a mere conjecture, as he was then at the side of the caboose, ten car lengths away where he could not see what occurred on the engine. And his opinion that the jerk was unusual and severe as compared with those which he had previously experienced on local freight trains, had no substantial weight; his situation on the ground by the side of the moving train, after his foot had turned on the piece of coal and he had gone "down," being plainly one in which he could not compare with any accuracy the jerk which he then felt with those he had experienced when riding on freight trains.
>
> In short, we find that on the evidence and all the inferences which the jury might reasonably draw therefrom, taken most strongly against the Railway Company, the contention that the injury was caused by the negligence of the engineer is without any substantial support In no aspect does the record do more than leave the matter in the realm of speculation and conjecture. That is not enough.

The case was argued by Mr. Ellis B. Cooper for the petitioner and by Mr. W. Calvin Wells for the respondent.

Criminal Law—Probation Powers

Under the Probation Act the district courts have the power to suspend sentence and place a defendant on probation after conviction, plea of guilty, or nolo contendere any time until the imposition of sentence but not thereafter.

United States v. Murray; Cook v. United States, Adv. Op. 201; Sup. Ct. Rep., Vol. 48, p. 146.

Two cases were brought before the Supreme Court, one by certificate from one of the Circuit Courts of Appeals and the other by certiorari, involving the construction of the Act of March 4, 1925, establishing a probation system for the federal courts. In one case the district court placed a convict on probation the day after sentence had been imposed. In the other, the probation order was entered over two years after the sentence was imposed.

Both cases turned on the meaning of the first and second sections of the Probation Act and were disposed of in the same opinion. Those sections make the following provisions:

> "That the courts of the United States having original jurisdiction of criminal actions, except in the District of Columbia, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public, as well as the defendant will be subserved thereby, shall have power, after conviction or after a plea of guilty or nolo contendere for any crime or offense not punishable by death or life imprisonment, to suspend the imposition or execution of sentence and to place the defendant upon probation for such period and upon such terms and conditions as they may deem best; or the court may impose a fine and may also place the defendant upon probation in the manner aforesaid. The court may revoke or modify any condition of probation, or may change the period of probation: Provided, That the period of probation, together with any extension thereof, shall not exceed five years.
>
> "While on probation the defendant may be required to pay in one or several sums a fine imposed at the time of being placed on probation and may also be required to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which conviction was had, and may also be required to provide for the support of any person or persons for whose support he is legally responsible.
>
> "Sec. 2. That when directed by the court, the probation officer shall report to the court, with a statement of the conduct of the probationer while on probation. The court may thereupon discharge the probationer from further supervision and may terminate the proceedings against him, or may extend the probation, as shall seem advisable.
>
> "At any time within the probation period the probation officer may arrest the probationer without a warrant,

> or the court may issue a warrant for his arrest. Thereupon such probationer shall forthwith be taken before the court. At any time after the probation period, but within the maximum period for which the defendant might originally have been sentenced, the court may issue a warrant and cause the defendant to be arrested and brought before the court. Thereupon the court may impose any sentence which might originally have been imposed."

The conclusion reached was that under this statute the power of the district courts to place a defendant on probation ceased upon the imposition of sentence. The reasoning leading to this result was explained fully by the CHIEF JUSTICE who delivered the opinion of the Court. He first adverted to the report of the House Judiciary Committee recommending the passage of the bill. That report pointed out the inadequacy of the then existing parole laws and the pardoning power of the executive in that they were operative only after the serving of part of the sentence or in any event after the imposition of sentence with its incidental disgrace. The provisions of the Act of June 21, 1902, fixing reductions of the time to be served, were also referred to.

With these various provisions of law as a background for construing the Probation Act the learned CHIEF JUSTICE undertook the determination of the question: Before what time must the probation be granted?

> Two answers to this latter question are possible. It must be grantable either at any time during his whole sentence or be limited to a time before execution of the sentence. If the first answer is adopted, it would confer very comprehensive power on the district judges in the exercise of what is very like that of executive clemency in all cases of crime or misdemeanor. It would cover in most cases the period between the imposition of the sentence and the full execution of it. It would cover a period in which not only clemency by the President under the Constitution might be exercised but also the power of parole by a Board of Parole abating judicial punishment to the extent of two-thirds of it as to all crimes punishable by imprisonment for more than one year.

The opinion continued with the suggestion that it seemed unlikely that Congress intended by this Act to add a third method of mitigation to punishment or to impose on the already overworked district judges the burden of hearing the applications of convicts during the entire time of their imprisonment. With reference to this parole statute and the executive clemency the learned CHIEF JUSTICE said:

> What was lacking in these provisions was an amelioration of the sentence by delaying actual execution or providing a suspension so that the stigma might be withheld and an opportunity for reform and repentance before actual imprisonment should stain the life of the convict.
>
> This amelioration had been largely furnished by a power which trial courts, many of them, had exercised to suspend sentences. In some sections of the country it had been practiced for three-quarters of a century. By the decision in Ex parte United States, that remedy was denied. In that case however, this court suggested legislation to permit probation. For eight years thereafter Congress was petitioned to enact it, and finally the Probation Act was passed.
>
> The great desideratum was the giving to young and new violators of law a chance to reform and to escape the contaminating influence of association with hardened or veteran criminals in the beginning of the imprisonment. Experience had shown that there was a real locus poenetentiae between the conviction and certainty of punishment, on the one hand, and the actual imprisonment and public disgrace of incarceration and evil association, on the other.
>
> If the case was a proper one, great good could be done in stopping punishment by putting the new criminal on probation. The avoidance of imprisonment at time of sentence was therefore the period to which the advocates of a Probation Act always directed their urgency. Probation was not sought to shorten the term.
>
> Probation is the attempted saving of a man who has taken one wrong step and whom the judge thinks to be a brand who can be plucked from the burning at the time of the imposition of the sentence. The beginning of the service of the sentence in a criminal case ends the power of the court even in the same term to change it. Such a limit for probation is a natural one to achieve its end.

It was conceded in the opinion that the construction given was not the only possible interpretation of the language and care was taken to emphasize that the history of this type of legislation and the inadequacies of other relevant powers had been considered in reaching it.

The case was argued by Mr. H. C. Wade for the petitioner in the Cook case and by Assistant Attorney General Mabel Walker Willebrandt for petitioner in the Murray case and for respondent in Cook case.

CURRENT LEGAL LITERATURE

A Department Devoted to Recent Books in Law and Neighboring Fields and to Brief Mention of Interesting and Significant Contributions Appearing in the Current Legal Periodicals

Among Recent Books

THE British Year Book of International Law. Eighth year of issue. 1927. New York: Oxford University Press (American Branch). Pp. vi, 221. $5.50. *Foreign Affairs: An American Quarterly Magazine.* Published by the Council on Foreign Relations, 25 W. 43rd St., New York. 1927. $5.00 per year.

The British Year Book of International Law, published by The Royal Institute of International Affairs, has become a recognized accurate annual summary of the most important international questions of the year. That for 1927, the eighth year of issue, maintains the high standard set by those of previous years which the names of its distinguished editors—Sir Cecil Hurst and Professor A. Pearce Higgins—would lead one to expect. Besides excellent summaries of the decisions, opinions and awards of international tribunals, as well as of national tribunals involving points of in-

ternational law, for the year 1926, and reviews of a dozen or more of the most important books of the year on international law, and matters involving important questions of the law of nations, a full bibliography of the same and a summary of events for the year 1926, compiled by the Royal Institute of International Affairs from newspapers, reviews, official journals, parliamentary papers, and other sources, the Year Book contains seven carefully prepared articles by outstanding scholars.

Mr. H. W. Malkin gives a most interesting "inner history" of the Declaration of Paris, which, he points out

"was the first and remains the most important international instrument regulating the rights of belligerents and neutrals at sea which received something like universal acceptance."

The events of the Great War, as Mr. Malkin says, revived the controversy supposed to have been settled by this famous Declaration, over the liability to seizure of enemy goods on neutral ships, or neutral goods on enemy ships, by which Great Britain renounced her long asserted right to seize enemy goods on a neutral ship and the French Government waived the right to capture neutral goods under an enemy flag. The Declaration established the principle for which the United States had long contended that "free ships make free goods." As compensation to Great Britain for her acceptance of this principle, it is proposed that the United States should agree to the abolition of privateering, to which renunciation England attached great importance. The United States, however, was unwilling to renounce this right, and, therefore, never became a signatory to the Declaration, although she probably never has commissioned a privateer since it was signed.

The Declaration of Paris also contained a provision that a blockade of an enemy port to be binding upon a neutral must be effective, and it excepted contraband of war from the protection against seizure of neutral goods under enemy flag. From these principles arose the doctrine of continuous voyage, which is discussed by Mr. O. H. Mootham. This is the name given to the rule that

"a neutral may not carry on circuitously a trade which he is not allowed to engage in directly."

The name, as Mr. Mootham says, is misleading, and may be explained by the fact that it originally related to the voyage of the ship.

"But the continuity which is essential is not that of the voyage of the ship, but of the transportation of the cargo."

He traces the origin and history of the doctrine and its application to the cases of contraband in 1756, blockade in 1804, and cabotage, or coastwise trade, in 1806.

Professor A. Pearce Higgins writes of "Retaliation in Naval Warfare."

"All the Codes of Warfare published by States," he says, "recognize the legitimacy of reprisals, but every attempt which has hitherto been made to regulate them by international agreement has been unsuccessful."

His study, of course, involves a consideration of Napoleon's famous Berlin and Milan decrees and of the consequent British Orders in Council of 1809, and a review of the judgments of Sir Samuel Evans in the case of the *Leonora* [1916] 2 A. C. 77, and of Lord Sumner in that of the *Stigstad* [1919] A. C. 286, which involved the Retaliatory Orders in Council issued by the British Government during the World War in reply to the German Government's decree of February 4, 1915, declaring the waters about the British Isles a war area, and that all enemy ships whatever their character found therein would be destroyed and neutral vessels would be exposed to danger, as well as the Order in Council of February 16, 1917, which followed the German announcement of an almost unlimited submarine warfare in European waters. The first fruits of the German decree was the sinking of the *Lusitania* on May 7, 1917, by a German submarine, and the destruction of the lives of 1,198 men, women and children —non-combatants.

The cases discussed involves the extraordinary powers and functions exercised by the British Prize Court as protector of neutral rights.

"Its function is," said Lord Sumner, in the case of the *Stigstad, supra*, "in protection of the rights of neutrals, to weigh on a proper occasion the measures of retaliation which had been adopted in fact, and to inquire whether they are in their nature and extent other than commensurate with the prior wrong done, and whether they inflict on neutrals, when they are looked on as a whole, inconvenience greater than is reasonable under all the circumstances."

This jurisdiction goes beyond anything vested in any American tribunal. The sense of responsibility for its exercise is adequately shown in the judgments reviewed. While, as Professor Higgins says, there are doubts as to the extent to which reprisals may be carried, it is well settled they must not violate "the imperious obligations of humanity." To this rule the decrees of the Anglo-French governments were held by the Prize Court to have conformed. While in the course of the execution of their decrees the Central Powers destroyed no less than 1,716 neutral ships, involving a loss of over 2,000 lives, "in no single case did the application of these principles" of reprisal decreed by the British Orders in Council,

"involve the loss of life to either enemy non-combatant or neutral; thus differing in a striking manner from the proceedings of their adversary."

Professor J. L. Brierly discusses the question of the need of an International Criminal Court, to which he gives a negative answer.

Mr. W. E. Beckett reviews the history of the case of *The Franconia* in the English courts (2 Exch. Div. 63) as bearing upon the case of the *Lotus*, which at the time of his writing was pending undetermined in the Permanent Court of International Justice—a case involving the right of Turkey, under the rules of international law, to punish criminally a French officer of mercantile marine arrested within the Turkish dominions for alleged culpable negligence in so navigating a vessel of his country as to collide with a Turkish vessel on the high seas, resulting in the death of eight Turkish sailors and passengers.

Sir John Fischer Williams discusses the difficult question of *Denationalization*—in the light of the principles of international law, first with regard strictly to the relations between a state and its nationals, and secondly so far as its decrees affect the relations between an individual of its nationals and another state towards whom he has certain relations.

Finally, Dr. H. Lauterpacht furnishes an article on "Spinoza and International Law." The article opens with the statement that

"Spinoza's contribution to international law does not exceed one thousand five hundred words, and its direct influence on the science of international law in the following centuries appears to have been altogether negligible."

After this candid statement, it will not seem strange that a perusal of seventeen pages of discussion fails to reveal anything of more interest than that Spinoza was of the opinion that a treaty is only binding on a state so long as the cause that produced it lasts. His views are in conformity with the doctrine embodied in the clausula *rebus sic stantibus*. This he derived from the theory that the state is above all moral laws. Hence we read

without surprise that Herder, Fichte and Hegel were admirers both of Machiavelli and Spinoza!

As will be seen, then, the British Year Book offers a varied repast to minds interested in international relations. *Foreign Affairs,* published in the United States by the Council on Foreign Relations, gives similar material in quarterly instalments—the four together presenting a volume and a variety similar to, but somewhat greater than, that of its English prototype. Both present the careful, thoughtful products of qualified minds for the consideration of intelligent readers who are not in the confidence of foreign offices and yet who feel the obligation upon all citizens of a modern democracy to endeavor to form intelligent and justified opinions upon relations between their own and other governments and peoples.

GEO. W. WICKERSHAM.

January 23, 1928.

The Bill of Rights and Its Destruction by Alleged Due Process of Law, by Henry Wynans Jessup (Callaghan & Co., Chicago and New York, 1927), (Preface VII-VIII), p. 1-87.

The thesis which this monograph seeks to maintain is, in brief, that rights contained in the first eight amendments to the Constitution (the Bill of Rights) cannot be amended by vote of three-fourths of the State Legislatures, as provided in Article Five of the Constitution. Since, under the Tenth Amendment, powers not delegated to the United States by the Constitution nor prohibited by it to the States are "reserved to the States respectively *or to the people,*" the author contends that the reservation to the States is of powers which State Legislatures could have exercised, and that reservation to the people is of powers and rights which the people of the States had never surrendered to their Legislatures. Hence, he contends that the intent of Article Five of the original Constitution was, that "Congress when confronted by a proposed amendment was to determine whether it related to the Frame of Government and the Schedule or to rights reserved to the people." If the proposed amendment concerned the structure or frame or mechanics of Government, then it could be referred to the State Legislatures. If it concerned the Bill of Rights, then the author takes two positions. On page 35, he states: "I assert that it was never intended that the Bill of Rights should be amendable by virtue of Article V of the Constitution." On page 72, however, he says that "what Congress should have declared, in proposing the amendment (the 18th) was that it involved a *right reserved to the people* and therefore should have requested that it be ratified *by conventions* and not by the Legislatures."

The author's theory is ingenious; but it is not supported by anything in the debates on the subject in the Federal Convention of 1787, or in the Congress of 1789 that adopted the Bill of Rights. On the contrary, not only those debates but the discussions in the State Conventions of 1788 which ratified the Constitution make it certain that no restriction was intended as to the kind or extent of amendment which might later be adopted. It was clearly contemplated that future amendments might contain additional restrictions on the powers of the States or of individuals, or remove those already imposed, or deny to the States powers which they then retained and reserved, or alter any of the great compromises of the Constitution. Especially was it clearly contemplated that the future amendments might abridge the reserved police powers of the States; for an express proviso proposed by Sherman of Connecticut, "that no State shall without its consent be affected in its internal police" by any amendment, was rejected by the Convention on September 15, 1787. There is no evidence whatever that the two modes of amendment (proposed by Madison) provided for in Article Five, viz.—ratification by the Legislatures, or by Conventions, in three-fourths of the States—had any reference to the differing nature of the amendments, or that one mode was directed towards amendments of the Articles affecting Congress, the Executive, and the Judiciary, and that another mode was directed towards amendments affecting individual rights. It is to be noted that in the original Constitution (prior to the Bill of Rights amendments) there were certain fundamental rights of individuals guaranteed—rights of similar nature to those in the Bill of Rights—the right to jury trial in criminal cases, the rights under the treason clause, the right against bills of attainder, the right of all privileges and immunities of citizens in other States. In the debates in the Convention, there can be found no trace of a suggestion or idea that amendments of these sections were to be made in any different manner than amendments of other sections. The fact is, the only reason for the suggestion of allowing amendment by Conventions was that elections to Conventions were on a broader basis than to Legislatures, there not being the restrictions as to age, property, and professions, etc., which applied to the latter, and hence a more general representation of the people might be expected in a State Convention than in a State Legislature. (With the removal of these restrictions at the present time, the reason has now largely disappeared).

There are other historical errors in this book which weaken the author's argument. On page 37, he speaks of the "First Constitutional Convention" as having been chosen by the people; it was in fact chosen by the State Legislatures. Massachusetts, in ratifying the Constitution in 1788, did not ratify "conditionally" as stated on page 31. New York was not the only State in 1787 whose Constitution contained no Bill of Rights (page 3); for the Georgia and New Jersey State Constitutions also contained none.

CHARLES WARREN.

Washington.

Carriage of Goods by Sea Act 1924, by R. Temperley and John Rowlatt, 1927. 3rd Edition. London: Stevens & Sons. Pp. 128.

This book relates, as its title indicates, to an Act of Parliament passed in 1924. The rules embodied in this Act are to apply in a greater or less degree to all contracts for the carriage of goods by sea from any port in Great Britain or Northern Ireland to any other port, with four exceptions which briefly stated are:

1. The Rules do not apply to carriage of live animals.
2. Goods carried on deck.
3. The rules have a modified effect in relation to: (a) The coasting trade. (b) Shipments made otherwise than in course of ordinary trade.
4. Rules do not apply to contracts by charter party.

The authors give a brief history of the various acts adopted in other countries, including the Harter Act of Congress passed by the United States in 1893, which was followed by the Sea Carriage Act of 1904 by Australia and the Water Carriage of Goods Act of 1910 by Canada.

This legislation was followed in 1921 by what is known as the Hague Rules adopted at the Hague in 1921 by the International Law Association. It was hoped that the various countries represented in this As-

sociation would adopt the Hague Rules and in that way the shippers and the ship owners would find universal contracts in use in every country, and thereby avoid all of the difficulties and controversies which now arise in the carriage of goods by sea, because of the conflict of laws and customs relating to such carriage.

So far the Hague Rules have not been adopted, although Parliament must have carefully consulted them and then passed the Act of 1924, which differs from the Hague Rules in a number of essential features.

The United States have not adopted the Hague Rules, but it is hoped it may do so, carrying out in that way the benefits of having uniform shipping contracts in the entire foreign carrying trade of the world. The Harter Act of 1893 was passed to check, if possible, the decline of the foreign carrying trade of the United States. The Acts of Congress prohibited the purchase of a foreign-built ship by an American citizen, and denied him the right to enroll such a ship in the American Merchant Marine. As the ship-building industry was in that way protected against foreign competition, and labor was much higher on board of an American ship than on any foreign ship, the American ship owner was at a great disadvantage in competing with the foreign ship-owners, especially those who were receiving valuable subsidies from their home governments.

The American ship-owner was at a further disadvantage as against a foreign ship-owner, because he could not limit his liability by clauses in his bill-of-lading, the courts having held that such clauses were against public policy and, therefore, void. Congress, in order to encourage and help the American ship-owner, passed the Harter Act declaring in terms how the ship-owner's liability should be limited and at the same time, to some extent, created a uniform bill-of-lading. Unfortunately, the existence of a tariff in the United States will greatly hamper the adoption of a uniform international bill-of-lading. The interest in the foreign carrying trade in American ships prior to the world war was of little importance, because the United States had such a negligible number of ships in that trade. The foreign carrying trade had ever since the Civil War been diminishing, until there was only a fraction of its fleet left when the war of 1914 was declared in Europe. This Government then began to realize how small a fleet of merchant vessels the citizens of the United States had engaged in foreign trade, and an era of ship-building began. A wild orgy of the building of ships prevailed in the most reckless and extravagant form. So enormously was this ship-building mania carried on, that at the close of the war in 1918 there were thousands of American ships lying idle in fleets of scores or more, in many ports of the United States in the Atlantic, Pacific, and Gulf of Mexico. Many of these ships were sold for one twentieth of their cost, some of them were scrapped, and many of them are still idle and unsold and fast becoming worthless.

The foreign carrying trade of the United States has not been prosperous, and hence Congress is not interested in passing legislation which is restrictive, rather than of advantage to that interest.

The book is a clear and concise statement and review of this English Act, and the decisions defining and construing it make it of value and importance to shippers, importers, and underwriters in this country. It is also useful in the library of the lawyer whose practice includes admiralty cases; small and compact, of convenient size, to be carried about by merchants, underwriters, and adjusters of losses. It ought to be in the hands of every ship-owner, as well as the lawyer.

The citations to both the American and the British Courts add practical value to the proctors in admiralty in cities of the sea coast.

CHARLES E. KREMER.

Chicago.

Leading Articles in Current Law Reviews

Oregon Law Review, December (Eugene, Ore.)—The Framing and Adoption of the National Constitution, by Lawrence T. Harris; President's Message to Oregon Bar Association, by W. Lair Thompson; Stare Decisis and Law Reform, by Charles E. Carpenter; Concerning the Record of the Supreme Court of Oregon, by John L. Rand; Law and Public Opinion, by M. A. Macdonald; Law Enforcement, by Rev. Levi T. Pennington.

Yale Law Journal, January (New Haven, Conn.)—Legal Personality, by Bryant Smith; The Pleading of Counterclaims, by Charles E. Clark and Leighton H. Surbeck; State Control of Utility Capitalization, by Maurice C. Waltersdorf.

Harvard Law Review, January (Cambridge, Mass.)—The Public Utility Concept in American Law, by Gustavus H. Robinson; Fraud, Undue Influence, and Mistake in Wills, by Joseph Warren; The Tort Aspect of Anticipatory Repudiation of Contracts, by L. Vold.

Boston University Law Review, January (Boston)—The Constitution and Common Law Restraints on Alienation, by Harold M. Bowman; The New Poor Debtor Law, by Bernard Ginsburg.

Canadian Bar Review, December (Toronto)—The Common Law—Its Debt to Rome (Part II), by Mr. Justice Rives Hall; Sir Richard Muir, by Mr. Justice Hodgins; Aspirations and Ideals of Canada, by Henry T. Ross.

Minnesota Law Review, January (Minneapolis)—Amendment and Aider of Pleading, by Charles E. Clark and Ruth A. Yerion; Acceptance of Bills of Exchange by Conduct, by L. W. Freezer.

Illinois Law Review, February (Chicago)—The Validity of Voting Trusts of the Stock of National Banks, by Murray C. Bernays; Mexican Petroleum Laws, by William D. Kerr; Federal Regulation of Securities Sales, by Forrest Bee Ashby.

Kentucky Law Journal, January (Lexington)—"Kentucky's Statute Against Perpetuities," by W. L. Roberts; The United States "War Power" and Limited Government, by Forrest R. Black; Kentucky Rule as to Tacking Interests in Adverse Possession, by H. H. Grooms.

Indiana Law Journal, January (Indianapolis)—Non-Contesting Clauses in Wills, by Sumner Kenner; Rationale of Corporate and Non-Corporate Suretyship Decisions, III, by Walter E. Treanor.

Virginia Law Review, January (Charlottesville, Va.)—Psychiatry and the Criminal Law, by Sheldon Gluck; Government by Corporations, by O. R. McGuire; Can a State Prescribe a Breathing Spell Before Its Legislature Acts Upon a Proposed Amendment to the Federal Constitution? by Robert M. Hughes.

TOUR TRAINS TO SEATTLE MEETING

By Thomas Francis Howe
Chairman of the Committee on Arrangements and Transportation

TO ENABLE members to plan to combine an enjoyable vacation tour with attendance at the Seattle Meeting, this announcement is made of the Committee's tentative plans for a round trip tour. In general the tour will include Glacier National Park on the outbound trip and Southern California, Zion National Park and the Grand Canyon returning, but is subject to change as all the arrangements have not been completed.

The tour possesses many unique features, including a total of over 900 miles of motoring through some of the most beautiful portions of American scenery. Nevertheless the itinerary has been tentatively arranged so that the members will be neither hurried nor wearied, and the program will be so varied that it will not become monotonous. The tour will differ from that to the San Francisco Meeting in 1922, in that more ample time will be given for unhurried enjoyment of the scenic and vacational points of interest.

Routing

Leaving Chicago on Monday morning, July 16, it is planned to spend three days in Glacier National Park. Leaving Glacier Friday night, July 20, will give an all day ride through the heart of the Cascades, with open top observation cars attached to each train. The party will arrive in Seattle Saturday, July 21, so that members may spend the next few days at Vancouver, Victoria, Seattle or other Puget Sound points, as they prefer, as transportation charges include boat trip to Victoria and Vancouver. During this time an all day trip to Mt. Rainer National Park is planned and arrangements can be made for those desiring to remain there over night at the Paradise Inn.

Returning, the trains will leave Seattle Saturday night, July 28. Sunday will be given to Portland and the Columbia River Highway Drive. Arriving in San Francisco early Tuesday morning, the day and evening will be spent there. A day will be spent at Del Monte and a drive arranged to Monterey, Pacific Beach, Pebble Beach and Carmel. Leaving Del Monte Wednesday night it is planned to arrive at San Diego Thursday morning. The party will be taken by bus to Coronado Beach and bus trips provided to Balboa Park and Tia Juana. The night will be spent at the Coronado Beach Hotel, and after luncheon on Friday the party will leave by bus for Los Angeles, driving along the ocean by way of San Juan Capistrano, Laguna, Seal Beach and Long Beach, arriving at the Hotel Biltmore in Los Angeles in time for dinner. Saturday, Sunday and Monday will be given to the surroundings of Los Angeles, including a one day trip to Catalina. It is planned to leave Los Angeles the evening of Monday, August 6, arriving at Cedar City, Utah, Wednesday morning.

Zion National Park and Grand Canyon

Travel during the next five days will be by bus, to view some of the most marvelous of the scenic beauties of this country. Leaving Cedar City in the morning, the afternoon of the first day will be spent in viewing Zion National Park and Zion Canyon, stopping over night at the Zion Lodge. An all day trip will be made the following day through the Kaibab National Forest, arriving at the Grand Canyon in the evening. The next two nights will be spent at the new Grand Canyon Lodge on the North rim of the Grand Canyon, which is much higher than the South rim. Leaving Grand Canyon the morning of the fourth day, the party will proceed by way of Kanab to Bryce Canyon, spending the night there at Bryce Lodge. Leaving Bryce Canyon after luncheon the following day sufficient time will be given to view the scenery at Cedar Breaks and arrive at Cedar City for dinner. Leaving Cedar City on Sunday evening the party will spend the next morning at Salt Lake City and arrive in Chicago the morning of Wednesday, August 15.

Entertainment

Beautiful drives will be available at every stop, some of which, such as the drive along the ocean at Monterey, the Columbia River Highway and the drive along the ocean from San Diego to Long Beach, are among the most beautiful in the world. The lengthy stops at Seattle, Del Monte, Coronado Beach and Los Angeles will furnish ample opportunity for golf. Surf bathing will be available at Victoria, Del Monte and Coronado.

Informal dinner dances and other light entertainment will be arranged for the evenings wherever possible. The Committee expects to attend to all details for those who prefer to have their entertainment arranged for them. Local bar associations will also cooperate in the entertainment of the party.

Equipment

Solid Pullman equipment of the latest type. Most of the sleeping cars will be corridor cars of drawing rooms and compartments. Each train will have two dining cars, a buffet car and a full length observation car. Each train will carry a ladies' maid, a barber and a stenographer, and will be provided with news service. A physician will accompany the party. Trunks will be so arranged in the baggage car as to be accessible during the trip. Those who prefer may sleep on the trains at all places except Seattle and Los Angeles.

All tickets, hotel reservations (other than Seattle) and all arrangements for the incidental trips will be handled by the Committee so that members will be free of all trouble respecting them. The Committee will have assistants on each train to serve the members.

Reservations

Transportation for this tour can only be arranged through the Chairman's office. As a general rule reservations can only be accepted for the entire tour for cash fare passengers. Acceptance of reservations for those who desire to accompany the party one way only, either going or returning, will depend on the Committee's ability to sell the space in the opposite direction, as the cars will be engaged for the round trip.

Definite rates will be available by March 10th, and members are requested to make their reservations as

early as possible. The number that can be accommodated will necessarily be limited to those for whom reservations are made, as the tour embraces many features which must be contracted for in advance. All communications relative to this tour should be addressed to the Chairman's office, Room 1714, 7 South Dearborn St., Chicago, which will gladly furnish detailed information.

ASSOCIATION OF AMERICAN LAW SCHOOLS HOLDS ANNUAL MEETING

Rule Regarding Amount of College Work Necessary for Admission to Member Schools Defined with View of Bringing About More Uniform Standard—Minimum Age for "Special Students" Raised to Twenty-Three Years and Grounds for Admission Stated

By H. C. HORACK
Secretary Association of American Law Schools

THE Association of American Law Schools held its annual meeting in Chicago on December 29, 30 and 31, 1927. This Association began its meetings in 1901 and has met annually except for a break of two years during the war, the recent meeting being the twenty-fifth annual meeting.

The Association is composed of sixty-two schools, all but two of which are within the borders of the United States, the University of the Philippines at Manila and McGill University at Montreal being the two exceptions. Fifty-eight of the member schools were represented at the meeting by from one to as many as nine faculty members. It is the policy of the Association to encourage law schools, though not members of the Association, to send representatives to attend and participate in its meetings. This year twenty non-member schools were represented.

Of the several applications received, the only new member of the Association elected at this meeting was the University of Arkansas.

The business sessions of the Association dealt largely with changes in the rules governing the admission of students, particularly in defining the two years of college work required before entering upon law study. The rule as it has stood for a number of years was stated in the alternative, permitting "either the completion of two years of college work or such work as would be accepted for admission to the third or junior year."

The standards for admission to the junior year in college have differed widely in various schools, some schools requiring the completion of the full two years of work, while others permitted entrance into the junior class, although the student had deficiencies amounting to as much as a half semester of work. After much discussion the Association defined the two years of college work in a way which it is hoped will bring about a more uniform standard. It is now provided that each member "shall require of all candidates for any degree at the time of the commencement of their law study the completion of one-half of the work acceptable for a bachelor's degree granted on the basis of a four-year period of study by the state university or the principal colleges or universities in the state where the law school is located."

The rule as now stated will not permit a student to begin his law studies if he does not have two years of college work fully completed. By using the phrase "work acceptable for a bachelor's degree" it was intended to make possible the recognition of pre-legal courses, although such course itself in a particular institution may not be one leading to a degree. A number of schools are already giving special pre-legal courses to prepare the student for his entrance into law study. These courses, though not leading to any degree, should, nevertheless, consist of work of such character as is acceptable for a bachelor's degree in the school where offered.

The rule was also phrased in such a manner as to attempt to take care of the many educational theories which are found in various schools, and to make as the test the completion of full two years of college work regardless of the number of class room hours which may be required of the student in any particular school. Some colleges believe that the student should have a less number of hours during his first two years when college work is new and more difficult for him, supposing that he can more easily carry a greater number of hours in the last two years of his course. Other schools adopt just the opposite theory so far as number of hours is concerned, believing that the student needs more hours with the instructor during his early period of study than he will require at a later time. These various educational schemes made it difficult to fix any set rule as to the number of hours of work which must have been completed by the student, and are responsible for the present wording of the rule.

Another matter which was given considerable attention was the provision for "special" students. The Association has always made it possible for member schools to accept a limited number of students who do not have the required college training who may be admitted as "special" students. The purpose of this rule is to take care of the unusual case of the man of mature years who through force of circumstances has not been able to take

college work. It always has been the attitude of the Association that a legal career should not be denied to the man of unusual ability who has arrived at such an age that to require two years of college preparation might bring upon him such a burden as to make practically impossible his entrance into the profession. The number of students which a school may thus accept has been limited to approximately ten per cent of its entering class. Experience has shown, however, that only in the case of schools operating under rather peculiar conditions are there in fact any such number of persons applying for whom such provision should properly be made. Most of those who ask admission under this rule are men who have shown an inability to pass the required amount of college work rather than those who have not been able to attempt such work. Some schools have, however, accepted as "specials" these students who have already demonstrated their lack of ability or lack of interest in study, and several schools have been found to take in the full number to which they might be entitled merely to increase the school's attendance.

At this meeting the age of the "special" student who might be admitted was raised from twenty-one to twenty-three years, but the general wording of the rule of the Council of the American Bar Association with reference to such students was followed, and it is now required that such "specials" should be admitted only when "there is some good reason for thinking that their experience and training have specially equipped them to engage successfully in the study of law, despite the lack of the required college credits."

It was made clear that the Association means to retain this provision for the deserving student whose maturity and experience should take the place of any college requirement. The Association has now provided, however, that the provision for the deserving student should not be abused by using it for the admission of students who are not serious, ambitious and show promise of success in professional work.

Recent inspections of member schools have shown a careful observance of the true spirit of the rule and only occasional cases have been found where a student has been given the privilege of entering as a "special" when his circumstances and probable success in study would not justify it.

The main addresses of the meeting were the following: An address by President James Rowland Angell of Yale University on "The University and the Law School"; an address by Justice Rousseau A. Birch of the Supreme Court of Kansas entitled "The Spirit and Method of Legal Research"; a paper by Professor Morris Raphael Cohen, of the College of the City of New York, on "Law and Scientific Method." The President's address, "A Return to Stare Decisis," was delivered by Mr. Herman Oliphant of Columbia University. Two other papers were read before the general meetings: "The Law Institute and the Law Teacher," by Mr. Herbert F. Goodrich, of the University of Michigan, and a paper on "Law Schools and Legal Clinics," by Mr. Charles M. Hepburn of Indiana University.

Round Table Conferences were held treating of matters of particular interest to more limited groups. The Council on Business Associations discussed "Shareholders' Pre-emptive Rights." The Council on Wrongs discussed topics in the law of Negligence which are now being treated as a part of the American Law Institute Restatement. The discussion dealt with the Preliminary Draft of Torts dealing with General Principles of Negligence, including (1) Factors to be considered, (2) Definition of Negligence, (3) Due care, (4) The reasonable man, (5) Basis of the duty to take affirmative action to keep others from injury; when does such duty exist.

The Round Table on Property and Status had three topics for discussion: (1) Are the rules as to accretions rules of construction or rules of law? (2) Is it possible to frame a precise definition of the term "property"? If so, how should it be defined? (3) What is the precise scope of the meaning of the word "estate" in the law of property at the present time?

The Round Tables on Public Law and Remedies held a joint meeting, discussing matters of interest to both sections. The two problems presented were "Procedural Methods of the United States Board of Tax Appeals," and "Teaching the Procedural Aspects of Administrative Law," by Mr. Walter F. Dodd, of Yale University.

Topics for discussion in the Round Table on Jurisprudence and Legal History were: (1) Remarks on the Legal History of Illinois, 1800-1809, (2) Methods of Teaching Legal History, (3) A Case Book on Jurisprudence.

The Round Table on Equity discussed (1) Equitable relief for Unilateral Mistake, and (2) Equity Receiverships as Proceedings in Rem.

The Commercial Law Round Table considered (1) The proposed amendments to the Negotiable Instruments Law, (2) The proposed Uniform Trust Receipts Act, and in addition to this discussion listened to an address on Waiver in Insurance Law by John S. Ewart, K. C., Ottawa, Canada, well known to the profession through his books on "Principles of Estoppel" and "Waiver Distributed among the Departments: Election, Estoppel, Contract, Release."

Through its committees the Association is doing special work on many problems of interest to the law and legal education. Report was made of the participation on behalf of the Association in the preparation of the Social Science Encyclopedia. During the year a study is to be undertaken with reference to law schools and legal clinics. The special committee on the Teaching of Professional Ethics in Law Schools was continued as was also the special committee on Cooperation with the Bench and Bar, both to make report at the next session.

The following officers were elected for 1928: President Austin W. Scott, Harvard University, Secretary H. C. Horack, University of Iowa. The newly-elected Executive Committee consists of Herman Oliphant, of Columbia University, Ira P. Hildebrand, University of Texas, and Albert J. Harno, University of Illinois.

A Binder for the Journal

On page VI of the advertising section of this issue, readers of the Journal will find an announcement of what we regard as a very satifactory binder for the Journal. Many members will no doubt be glad to preserve their Journals for this year—and perhaps for past years—in this manner, and we suggest that those who are interested turn to the announcement.

"THE CAUSE OF THE CRIME WAVE:" A REPLY

Observations of the Survey Committee of the Missouri Association for Criminal Justice on the Paper by Justice John Turner White, of the Supreme Court of that State, Published in the Journal for December, 1927

HONORABLE JOHN TURNER WHITE, one of the Judges of the Supreme Court of Missouri, read a paper before the recent annual meeting of the Missouri Bar Association entitled "The Cause of the Crime Wave." This paper was published in the December, 1927, issue of the American Bar Association Journal and has been widely distributed in pamphlet form throughout Missouri.

In it Judge White undertakes to prove from the data gathered in the Missouri Crime Survey that the prevalence of crime is due to the failure of the police to catch the criminals. He refers in quite complimentary terms to the Missouri Association for Criminal Justice and the work done by it. Thus he says:

"The Missouri Crime Survey, the result of which has been published by the Missouri Association for Criminal Justice, is the first work of its kind ever undertaken in this country, or any other. With no attempt to support a theory it gathered the *facts*, with thoroughness and accuracy and with the aid of expert skill. Too much cannot be said in commendation of this extraordinary work or of the high purpose of the gentlemen who undertook and carried it through."

And in a note appended to the pamphlet copy of the paper he further says:

"I approved of the work of the Association from the time it began its operation until its finish. I think the work, as I repeatedly stated, is highly commendable, and worth all it cost and more. It has led the way in the investigation of the crime situation which other states have followed."

While these expressions of commendation are greatly appreciated by those who gave much of their time and thought to the survey in the belief that it was necessary, and that they were performing a useful public service, nevertheless they are no more than was to have been expected from Judge White, who, from the inception of this work and until its close, by his co-operative suggestions and his repeated evidences of sympathy and approval, gave encouragement to those who were engaged in it.

He has paid a distinct tribute to the value of this work not only by his above quoted words of commendation, but also by his serious analysis of a part of it, and the publication of his own conclusion based thereon that it has proven the cause for the prevalence of crime. Nevertheless, in what seems to be an effort to acquit the courts and to fasten entire responsibility upon the police, some of his statements of condemnation intended for others may be, indeed have been, construed as intended for the survey. Furthermore, the good Judge has fallen into error here and there in his analysis of some of the figures presented by the survey and in his imputations to the survey of certain interpretations of those figures which the survey never intended. Therefore, in continuance of the friendly spirit of co-operation with Judge White in our mutual efforts to the same end, we think it important that the following observations on his paper be made.

The learned author takes up the cudgels for the courts and other officials in the state. While we are quite sure that in this defense he had in mind repelling the attacks of others, nevertheless certain of his remarks in this connection are apt to be construed, and, indeed, by some have been construed, as being directed against the survey. Of course the survey is deserving of no such criticism.

All through the survey reports two things were obvious: the first, was that the trial courts actually have coming before them from day to day only an insignificant fraction of all felony charges filed and an infinitesimal number of cases compared with the actual number of felonies committed; and the second is that the trial courts, or rather the judges themselves, in spite of the limitations placed upon them by the laws of criminal procedure, are the most effective of all the officials or agencies in protecting the rights of the people. There is nothing whatever in the survey that calls for or justifies a defense of the trial judge of the State. So far as the survey is concerned, they need no champion. (The Missouri Crime Survey pp. 165, 172.)

The paper observes that the survey is "incomplete" because limited in the time covered and to only a part of the State. This, of necessity, must be true of all surveys; but that does not make the survey "incomplete" in the sense that it is insufficient. The *time period* covered by the survey, that is, one year in the large cities and two years in the country districts, was ample to allow for seasonal and other variations in the volume of crime, and it covered *sufficient area*, well enough distributed, to give an adequate cross-section of the whole State, allowing for every condition which might in any wise affect the commission of crime. The actual conditions could not be more truthfully disclosed by getting more figures over a longer period and a larger territory. The record is complete on every felony case started in the period covered. Where there were no records of, for instance, "crime reported" in the country districts, it was impossible, of course, to get the information and the survey cannot justly be criticised on that account. An effort was made to get this information from the files of newspapers, but this was found impracticable because the record there was incomplete and it was, for the most part, a record only of those crimes of which there was already a court record, so this effort was abandoned as futile.

It is next said that "the supposed cause" (of crime), namely, defective laws and improper administration, "has operated continuously for a long time without the present claimed effect." No one has ever undertaken an appraisal of the operation of those causes and the result until this survey was

made. That is what the survey was intended to do. Therefore, to say that there has never been any relation between these causes and the commission of crime until the survey disclosed that relation, is to assert not the knowledge of a fact by the critic, but merely his speculation, and there is reason to believe that this speculation is unsound. While none who have given serious thought to the subject would assert that the *sole* cause of crime is "defective laws," there is abundant reason to believe that there is now and has been for a great number of years a large amount of unpunished and unnecessary, because preventable, crime in our country, particularly in the populous centers, and we know that conditions became similarly intolerable in England and were vastly improved there with the correction of "defective laws," and that just across our border in Canada, where these "defective laws" have been in large measure eliminated, no such crime condition exists as plagues us. The criticism however, becomes unimportant because of Judge White's statement of our Criminal Code that "I admit every defect claimed for it and more."

The paper says that the argument "assumes that courts are the only agency for the detection and prevention of crime." Here doubtless the author was speaking of the argument of others and not of the survey. Knowing that the courts are not the only agency for the detection and prevention of crime, the survey included metropolitan police systems in St. Louis, Kansas City, and St. Joseph; the office of sheriff throughout the state; the office of coroner throughout the state; the office of prosecuting attorney throughout the state; the system of record keeping; indentification and statistics; bail bond; necessary changes in criminal procedure; pardons, paroles and commutations; and mental disorder. None of these agencies is judicial and yet all of them have much to do with the "detection and prevention of crime," and the survey makes, moreover, findings and recommendations with respect to each and all of them.

It is said that "the tables are arranged with a view to making impressive the disparity between 7032 charges filed and 2232 sentences executed." Even if true, this would not be censurable. But the author is mistaken about this. The tables were arranged in the only logical manner possible. They begin with the warrants issued in felony cases and proceed step by step as the cases proceeded in court, through the preliminary hearing, the trial, and to the final disposition. If he thinks it would have been better to start with the convictions and work backward through the Circuit Court, and through the preliminary hearing to the warrants issued, of course he is entitled to his opinion; but we believe that our arrangement is better because more logical and contributing to clarity and understanding. The table that the author chiefly had in mind was the following:

MORTALITY TABLE

Non-Liquor Felony Cases
Totals for State

		Cases	Per Cent
A.	Warrants issued	7,032	100.00
B.	Preliminary hearing		
	1. Discharged	574	8.16
	2. Disposed of as misdemeanor	195	2.77
	3. Dismissed for want of prosecution	689	9.80
	4. Nolle prosequi	182	2.59
	5. Other dispositions	194	2.76
	6. Total	1,834	26.08
C.	To Grand Jury and Circuit or Prosecuting Attorney	5,198	73.92
	1. No true bill	9	.13
	2. No information issued	220	3.13
	3. Total	229	3.26
D.	To Circuit Court	4,969	70.66
	1. Nolle prosequi	1,106	15.73
	2. Disposed of on action of court	251	3.57
	3. Tried and acquitted	323	4.59
	4. Other dispositions	609	8.66
	5. Total	2,289	32.55
E.	Sentenced, sentence not yet executed	2,680	38.11
	1. Paroled	344	4.89
	2. Appealed	93	1.32
	3. Other dispositions	11	.16
	4. Total	448	6.37
F.	Sentence executed	2,232	31.74

Referring to the figures which disclose that out of 7,032 felony charges only 2,232 sentences were executed, it is said, "the report naively suggests that the chances are seven to three that any one charged with a felony will not be punished. That statement is not strictly accurate." This is a mistake. What the report says is this:

"The chances of a felony case in Missouri reaching the state of execution of sentence are 7 to 3. For of 100 cases in which warrants are issued, approximately 70 will have been eliminated and approximately 30 (exactly 31.74 per cent) will be punished. To put this in a more personal way, our figures show that a man upon entering the preliminary hearing as a defendant in a felony case would be justified in the long run in betting seven to three that he would not be punished for the offense *of which he is accused.*" (The Missouri Crime Survey p. 273.)

This is exactly what the figures show. 7,032 warrants were issued charging the commission of felonies and in but 2,232 of these cases was punishment imposed for the felonies charged and 93 cases were pending on appeal. It might be further observed that of the 2,232 cases in which punishment was imposed for the felonies charged, but 1,109 were committed to the penitentiary. The remaining 1,123 were punished otherwise, such as by being committed to the reformatory, to jail, to the workhouse, fined, etc. (See The Missouri Crime Survey, page 288, Table VI, where these 2,232 punishments are detailed). So that the 7,032 warrants charging the commission of felonies resulted in 1,109 penitentiary sentences. The other 70%, to wit: 4,800 of the 7,032 warrants issued, were disposed of in other ways *shown by the survey*. Some were fined or jailed as misdemeanants; others were discharged with no punishment at all through the action of the prosecutor or some other official; and some were paroled or given probation, and 93 cases were pending upon appeal in the Supreme Court when the survey closed. These facts were all set out in the survey in detail. Judge White is right in saying that the above quotation from the survey has been misinterpreted. He says "the inference by some writers on the subject is that seven out of ten persons *'guilty'* of felonies escape justice." But this misinterpretation is the fault of "the writers" to whom the Judge refers and not the fault of the survey. The survey does not say nor in any way suggest that seven out of ten persons *guilty* of felonies escape justice, but does state very plainly that "the chances of a felony *case* in Missouri reaching the state of execution of sentence are seven to three" and the survey is correct.

Proceeding, the paper, after calling attention to the fact that of 5,919 cases which went to preliminary hearing only 3,913 survived to be bound

over, adds, "It is inferred that all the rest of the criminals escaped through defective prosecutions." Here again the reference was to others and not to the survey. No such inference was drawn by the survey. Upon the contrary the survey showed precisely what happened to these 2,006 cases that dropped out after the warrants were issued and before or at the preliminary hearing. (See The Missouri Crime Survey, tables pages 274, 281, 283, and the textual comments thereupon.)

Next, referring to the figures given in the survey of 195 felony charges disposed of in the preliminary hearing as misdemeanors, it is stated that "all comments on these figures assume that everyone of the eliminations represents a guilty person escaping punishment." No such assumption is anywhere made in the survey. The survey undertook to and did give the facts to show what was happening to "felony cases" started in Missouri. The survey states that 195 of these felony cases were reduced to misdemeanor charges in the preliminary hearings. The survey does not charge any impropriety whatever against the committing magistrates who reduced these charges of felony to misdemeanors. On the contrary the survey expressly directs attention to the fact that many of these reductions of charges were found to have been properly made as, for instance, in the case of a charge of grand larceny where it turned out that the property was worth less than thirty dollars and the defendant was therefore guilty of petit larceny, a misdemeanor. (The Missouri Crime Survey, page 282.)

Concerning the item "nolle pros. account other indictments 172," it is asserted that this item should be subtracted from the total of charges filed. That is exactly what was done and the reason why it was subtracted was stated in the survey. (The Missouri Crime Survey p. 279). No attempt was made to fasten guilt upon anybody. *The survey set out to get and state the facts.* This it did. After taking a record of charges filed, it was necessary to follow through and show what became of those charges. This item represents dispositions made of 172 of the total charges filed.

As to the items "Discharged 574" and "dismissed for want of prosecution 689," total 1,263, it is said: "Formerly, we would say justice was accomplished in such cases," and then, "Is there any reason to believe that Justices of the Peace are less competent or more corrupt than formerly?" No mention of the prosecutor's responsibility in these cases is made by the Judge. He indulges in conjecture in attempted explanation of what *might have* caused these dispositions. The survey has presented *the facts*, and these facts are that in the preliminary hearing, of 7,032 charges of felonies, 574 were discharged and 689 were dismissed for want of prosecution, a total of 1,263.

Of much the same character is the item "appealed 93," which the paper states "are noted as escapes of the guilty and convicted." The item is not so "noted" in the survey and does not have that significance. The item simply means that, of the total charges filed, 93 cases were appealed and no punishment had been inflicted for the reason that they were still pending on appeal at the time the survey was completed. This is quite different from a statement that the defendants in these cases had "escaped punishment." The survey says: "The item means that up to the end of the time covered by the survey that many cases had not ended with punishment inflicted." Judge White completes the survey of these 93 cases by showing the disposition that was made of them in the Supreme Court following the period of the survey. This, of course, was not covered by the survey because the cases had not then been terminated. The result of this further investigation made by him is interesting. It shows that the percentage of these cases that were reversed was about 27%. This is in accord with the record which a supplemental survey of the opinions of that court discloses. The Association's initial survey of the opinions of the Supreme Court was for a ten-year period, ending December 31, 1924. It found and published that the reversals were about 44%. An examination of all the criminal cases decided by that Court during the three years since the survey (Jan. 1, 1925,-Jan. 1, 1928), discloses that the reversals have been about 25 percent.

Concerning the item "paroled 344," it is said: "The survey attacks abuses of the parole system, but it shows what happened to those particular parolees," from which it might be inferred that the survey made an attack on the judges who granted 344 judicial paroles, and then the attempt is made to show by the figures of the survey that this attack was unwarranted. The fact is the survey made no attempt to appraise either the success or the failure of judicial paroles, but the survey obtained the opinions of a large number of circuit judges in the State upon the question of the bench parole law and printed their comments, together with a detailed table of what happened in each of these cases. (The Missouri Crime Survey pp. 184, 185.)

Discussing the 1,288 cases that were nolle prossed by the prosecutor, it is said that "we are asked to assume that they were *all* failures of justice." The survey made no such suggestion or request. On the contrary, the reader of the reports was specifically warned against any such assumption. Complaint is made that there is an absence of information as to the reasons why these cases were nolle prossed. *There was no record of the reasons* (The Missouri Crime Survey p. 146) and in the absence of a record, it was, of course, impossible to ascertain the reasons. The survey commented pointedly upon the absence of such a record and recommended the practice of a number of other states of requiring a prosecutor to file a written statement of his reasons for nolle prossing a case, in the following language:

> "Recommendation 6. Enact law providing criminal cases shall be dismissed prior to time when the jury is sworn only by the court, upon written motion filed by the prosecuting or circuit attorney, setting out in full the reasons therefor." (The Missouri Crime Survey, p. 160.)

It was the purpose of the survey throughout to make constructive criticisms. The paper resorts to *conjecture* to account for these dismissals, but the *fact* remains that of 7,032 charges of felony, 1,288 were nolle prossed.

Concerning the item "other dispositions," it is said, "What those dispositions were in detail is not stated." This was, no doubt, an inadvertent statement for those dispositions *were* detailed in the reports of the survey, (pages 279 and 280).

The author then comes to what he calls "the real revelation of the survey." He directs attention to the following figures presented by the sur-

vey, towit: That during the year covered by the survey in St. Louis 13,444 major crimes were reported to the police of that city and that only 964 warrants were issued. Thus, he says, 93% of all crimes reported go unpunished because the criminals are not caught. From this he concludes that "the cause of the crime wave" in Missouri is failure of the police to catch the criminals. In fairness to the police of St. Louis and Kansas City it should be observed that frequently many crimes are committed by the same criminal, perhaps the same night or during a few days, before he is caught. Hold-ups, or robberies, for example. Therefore, while 13,444 major crimes were reported in St. Louis during the year covered by the survey, it by no means follows that these were committed by 13,444 criminals, only 964, or 7%, of whom were apprehended. Furthermore, in 456 additional cases of these major crimes the police of St. Louis, believing they had sufficient evidence, applied for the issuance of warrants but warrants were refused. (The Missouri Crime Survey page 543). Again, he assumes that the same proportion of criminals caught to crimes committed obtains throughout Missouri, for he says that "the entire work of the survey concerns only 7% of the crimes committed." That is not the case. As we have already noticed, no adequate records of crimes reported are kept outside of St. Louis and Kansas City, and while the records in those cities disclose that the warrants issued are but 7% of the crimes reported in those cities, such unofficial data as the survey was able to gather elsewhere in the State indicates that in rural Missouri the percentage is far greater. Nevertheless Judge White has done a real public service in calling attention to this data gathered by the survey and in emphasizing the disparity between crimes committed and criminals caught. Though we cannot agree that failure of the police to catch more criminals is the sole "cause of the crime wave," it is without doubt an important contributing cause and one of the places in our system of criminal procedure most urgently in need of improvement. Judge White says:

"I do not venture to suggest what changes in the system of policing cities would improve its effectiveness."

The survey was more venturesome. It devoted a whole chapter to police administration and methods and made a number of suggestions that were considered effective, based upon the facts disclosed by the survey, some of which have been adopted with gratifying results. One of these not yet adopted was "local control of police." We are gratified that Judge White also advocates this in the following language: "One thing seems certain: each city should have absolute control of its own affairs in that respect." This was one of the most important recommendations of the survey and was the subject of one of the bills presented by it to the legislature.

Though failure to catch the criminals is an important fact revealed by the survey, the survey disclosed a number of other facts having intimate relation with crime conditions, for example: that there is no uniform system of court records in Missouri; that in many counties the records are in a deplorable condition; that we are without any system of criminal statistics or identification; that during the period of the survey bail bonds aggregating $292,400.00 were forfeited and $1,572.80 were collected; that the prosecuting attorney has the power of life and death over all prosecutions and may dismiss them with or without just cause and without assigning reasons therefor; that though the office of prosecuting attorney is the most important in the state having to do with the administration of criminal laws, it is used as a kind of training school for the beginner in the legal profession about 40% of whom have never graduated from a law school; that though our trial judges are the most capable and the most efficient of all of the agencies that deal with crime, they are hedged about with such constitutional and statutory restrictions as to make them mere moderators in the trial of criminal cases; that some of those who commit crimes are mentally and sometimes physically in need of treatment rather than punishment; that we should have a hospital for the criminal insane and defective; that there is a woeful lack of coordination and cooperation between the agencies that have to do with the administration of criminal law, resulting necessarily in a great measure of inefficiency; that about 50% of those paroled from the reformatory fail; that the practice of granting commutations to the prisoners in the penitentiary upon serving 7/12ths time has practically supplanted all other forms of release; that life sentence means eleven years of service; that there is a great need of a state constabulary; that our code of criminal procedure is defective in the particulars pointed out by the survey; that we should have an intermediate reformatory for youthful first offenders; that Missouri spends annually upon her criminal courts and other agencies instituted to protect life and property about Nine Million Two Hundred Thousand Dollars; that her property loss from the depredations of criminals is placed by competent authority at Eighty-five Million Dollars annually, so that Missouri's crime bill is probably about Thirty Dollars per capita per annum; that in St. Louis and Kansas City alone, with their combined populations of a million two hundred thousand, there are about 170 persons murdered annually as compared with 27 murders per year in London with its seven million three hundred thousand people; that the average time elapsing between the commission of a crime and the disposition of the case by the Circuit Court is more than nine months and from the disposition by the Circuit Court to the hearing of the case by the Supreme Court on appeal is thirteen months, and from the commission of the crime to the disposition of the case by the Supreme Court, two years and twenty-seven days; that for every hundred warrants issued for the commission of non-liquor felonies, in only approximately thirty cases is punishment imposed for the felonies charged, and only sixteen receive penitentiary sentences.

As supplementary to the survey's recommendations in connection with the matter of police administration, Judge White specifically suggests the police policy of "shoot to kill." He says:

"The enactment of laws involving severer penalties, and a coincident decrease in crime, proves nothing unless one can trace the effect to the supposed cause. The in terrorem effect of a law can only be noted if the law is executed in specific cases. But the relation of cause and effect seems apparent in the recent policy adopted at Kansas City. Officers were instructed to 'shoot to kill' when bandits refuse to raise their hands. That order was followed, it has been said, by increased mortality among robbers and an immediate decrease of 60 per cent in major crimes. That affords a suggestion of one method which seems to be effective. Every robber shot in the

act is notice to the world that robbery is more or less a hazardous business. The only thing in the way of making it completely effective is the difficulty of general application of the remedy."

If he is serious about that, he is obviously on dangerous ground. Only a few short years ago such an order given by the executive to the police commissioners of Kansas City and by them communicated to the patrolmen resulted in the police "shooting to kill" several persons who were shot down on the streets because they did not "raise their hands." Nothing that has happened in Missouri for years has caused so much general indignation and contempt for the law. An order to "kill" given to an ordinary patrolman means to kill anyone who may look to him like a person who ought to be killed. This is indeed "roadside justice." The policeman becomes prosecutor, court, and executioner all in one. Ours is a government of law and it is regrettable that Judge White should seem so strongly to advocate such a policy.

He says: "In all discussions of statistics, such as the survey shows, it is assumed that every person charged with a crime is guilty, even though acquitted." Here again he was doubtless referring to the discussion of others and not to the survey. No such assumption was made or implied in the survey. If it had been we would expect Judge White to be the last to complain for he asserts:

"Of course, the inference is warranted that charges of crime are not made recklessly nor wantonly, and that most persons charged with crimes are likely to be guilty. Therefore a very large proportion of failures to convict show inefficiency somewhere."

A moment later he states: "The extraordinary theory is advanced and maintained that courts are inefficient in direct proportion to the ratio of convictions and punishments to the total number of accused." This too we take it is a reference to the theory of others and not to the survey. No such statement as that was in the survey. On the contrary, as we have repeatedly noticed, the survey finds and asserts that the trial courts in spite of the restrictions that the law imposes upon them, are the most efficient of all the agencies for the administration of justice. The survey's records show, and the reports of the survey state, that of all the agencies for the administration of justice in Missouri, the trial judges, although having the least power, are the most efficient. Judge White himself concedes that the "survey notes the general high character and ability of the judges."

The Missouri Association for Criminal Justice was organized to make a state-wide survey and secure the *facts* with respect to all the agencies that have to do with the apprehension, the prosecution, the trial, the punishment and the treatment of criminals. It was believed that if the *true facts* could be known, two results would follow: First, public opinion would be informed and aroused, and in response thereto there would be a better administration of criminal justice under the laws that we have; and Second, the deficiencies in the law that the facts would disclose would be strengthened by legislation. At considerable expense and a great deal of patient toil, the facts *have* been gathered. No one has and no one can successfully impeach their accuracy. The first of the results hoped for has followed, for public opinion, in Missouri, *has* been informed and aroused, and in response thereto, there *has* been a marked improvement in the administration of our criminal laws by *every* agency, with the result that crimes of violence have diminished. As for the second desired result, towit, necessary legislation, the legislative program has been formulated and given to the public; it has met with quite general approval; bills have been drafted and will again be offered at the approaching session of the legislature, and if the friends of a better social order will lend a hand, this remaining purpose of the survey will reach fruition.

GUY A. THOMPSON, Chairman, T. C. HENNINGS, X. P. WILFLEY, J. P. MCBAINE, ROMULUS E. CULVER, A. V. LASHLY, Survey Committee, Missouri Association for Criminal Justice.

A Return to Stare Decisis

(Continued from page 76)

favorite theory whose precise border we want to mark out. There has been little genuine re-examination of the holdings of those cases which lie at the center of that theory in order to test the utility of the whole generalization.

We have heard much complaint of the more highly commercialized type of law books. In them a summary statement of the whole law is attempted in a relatively few volumes and some courts are citing them with increasing frequency. They and sound scholarship stand at antipodes. But consider the demand for them. Their sales have been mounting while those of truly critical text books have languished. Have we paused to consider that our drift toward more generalized statements of aging abstractions may have been helping to create that demand? If they be an evil,— and that has been widely asserted,— is the way to meet that evil to surrender to it by adopting their approach and methods. An era of scholarship whose end product is the erection of a law of ruling cases composed of word patterns largely detached from life, broad enough to be all inclusive, vague enough to be self-consistent, leaves so much to be desired that no general silence, whether timorous or reverential, can long conceal it.

All this must be an end product marking the close of an era of legal scholarship, rather than the opening of a new one, for what promise of rich fields for truly productive scholarship does it hold out? Certainly the prospect of some generations of energy being spent in glossing the text of authoritative general statements is not inviting. And there is some reason for one to fear that, unless one does not expect them to be accepted as authoritative. The prospect of lengthy discussions of just why "a" instead of "the" was used in the black letter of a horn book does not fire the imagination. Nor is there escape in the proposal continually to restate these statements if that be carried on along present lines. Such further restatements will be made necessary by exceptions and conflicts which appear from time to time. They can be reduced and subtended only by expanding present generalizations into yet larger bubbles of unreality. Nothing new and nothing vital lies in this direction. This path inevitably leads to viewpoints more and more remote from life, more and more obsolescent. Ahead are the mirages of an intellectual dreamland. No new era of sound scholarship can have for its principal business the further logical elaboration of present abstractions. Pursuit of them through the opinions drives thought down no constraining channels so that its courses can be mapped.

(Concluded in March issue)

J.C.L. 159

TEACHING THE CONSTITUTION IN THE SCHOOLS

Citizenship Committee of Illinois Bar Association Sets Out to Learn the Facts as to Time Devoted to Constitutional Instruction and Methods Employed—Criticism of Examination Questions—Lawyers and Educators Should Work Together to Establish More Thorough System

A GOOD idea of how and to what extent the Constitution is taught in the schools of one state, in obedience to statutory command, is given in the report of the American Citizenship Committee of the Illinois Bar Association to the recent meeting of that organization. This committee, in cooperation with the Vice-President of the American Bar Association for that state, sent out a letter of inquiry to the superintendent of education in each county of the state and to the school superintendents of the leading cities. The information secured furnishes a much needed factual basis for further procedure in dealing with the problem. As there is reason to believe that the situation in Illinois is fairly representative of that in many other states having a similar statutory command to teach the Constitution in the schools, the committee's report appears to be of more than local interest. It is as follows:

Chicago, December 2, 1927.

TO THE ILLINOIS STATE BAR ASSOCIATION: In compliance with the recommendation made at the meeting of the Board of Governors a letter of inquiry as to constitutional education was sent to the Superintendent of schools in each county of the State and to the Superintendents in the leading cities.

As the American Bar Association arranged at its Executive meeting last May that the Vice-President of the organization in each State should be chairman of its Committee on American Citizenship and should cooperate with the Citizenship Committee of the State Association, the letter of inquiry to the educators of Illinois was signed by both the Vice-President of the American Bar Association and the Chairman of this Committee on American Citizenship of the Illinois State Bar Association.

From 102 counties 31 answers were received. From 19 cities came responses from 10 superintendents.

The letter of inquiry asked (1) whether the Constitution of the United States is taught as a separate subject in the seventh and eighth (or equivalent) grades and the high schools; (2) whether the Constitution of Illinois is taught, and, if it is, in what way; (3) what time is given each year to either constitution; (4) what work is done to comply with the law if neither constitution is taught as a separate subject, and what text book is used for such work; and (5) what are your ideas on the making of enlightened constitutionalists, that is, citizens competent for self-government.

The letter contained also a request for sets of examination questions on the Constitution submitted to teachers and sets submitted to pupils. Only three counties and one city sent such questions.

The law of Illinois referred to in question (4) was enacted in 1921 and took effect on July 1. The legislative command to teach the American doctrines of government as expressed in the Declaration of Independence and the National and State constitutions is directed only to the Seventh and Eighth grammar grades, the High Schools, and to other educational institutions receiving public funds. But permission is given for teaching below the Seventh grade, which teaching must necessarily be in a more elementary form. The manifest purpose of the legislation is that when pupils reach the grades from which the majority take leave of school forever they shall receive intensive instruction in our Republican system of government lest they enter active life unfit. And certain it is that unless the youth in school are made acquainted with the fundamentals of our Constitutional theory and practice, adults cannot know them.

The responses disclose that in only one of the 31 counties reporting and in only one of the 10 cities is either Constitution dealt with as a separate subject. Where the subject is taught, the work is in connection with civics or history.

In the 31 counties 17 different text books, the reports show, are in use on civics, on country life, on government, on problems of democracy, and on civic problems.

The examination questions prepared by the State Examining Board and put to teachers to test their fitness to give instruction in the Constitution are, in our opinion, although possibly sufficient for teachers in grades below the Seventh, not enough concerned with constitutional *principle* adequately to test the fitness of teachers in the grades specified in the Act of the Legislature. They are as follows:

American History and Civics

"1. Discuss the development of our Banking System from Andrew Jackson to Woodrow Wilson.

"2. Sketch the growth of suffrage since the adoption of Constitution.

"3. Name the outstanding service of each of the following: (a) Governeur Morris. (b) DeWitt Clinton. (c) James Smithson. (d) John Erickson. (e) Salmon P. Chase. (f) Elihu Root. (g) George H. Thomas. (h) John Dickinson. (i) John Marshall. (j) Horace Mann.

"4. Name five distinctive features of our American system of government.

"5. Tell of our foreign relations since the close of the World War with (a) Mexico. (b) China. (c) Russia. (d) France. (e) Nicaragua."

These questions have no relation to the evils of government from which the American Constitutional system took rise, nor to the measures established by the founders of the Republic for preventing in the New World the tyrannies of the Old. They illustrate that the Constitution should be taught separately from history. Without a knowledge of those two aspects of the subject the citizen cannot have a valuable and safe opinion on questions of governmental policy which arise from day to day and the right or wrong of which it is his duty to determine.

The constitutional system of the United States has to do with the use or misuse of power, and that is true of every State constitution. "In questions of power, then," wrote Jefferson, "let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution." At the time our Constitution was written the man was the victim of his government in every country of the World, as he always has been. The Constitution was designed to make the man the master of his government. He must be educated to maintain that mastery or he will surely lose it.

One city high school submitted examination questions for the senior class. A reading of them shows that while they go over the Constitution rather fully in a way, they do not in any sense call for a knowledge of the *why*. What evil was

to be cured, for example, (taking one of the questions put), by requiring the President to sign a bill or else return it with his objections? The questions do not reach for the evils and the cures found in every clause of the Constitution. And these must be known or the citizen cannot be competent. Space permits giving only ten of the twenty-one questions in the test:

"Below are statements, some of which are true and some are false. If the statement is true, underline the word "true" at the side. If the statement is false, underline the word "false" at the side.

"1. The Articles of Confederation were the set of laws that governed our country after the close of the Revolutionary War.....True or False.

"2. A man is eligible to be President if he is thirty-five years of age, fourteen years a resident within the United States, and an American Citizen.....True or False.

"3. If a man had lived in Indiana for ten years and had been a natural born citizen of the United States, he can never be a Senator from Ohio, even though he had attained the proper age limit.....True or False.

"4. The Bonus bill originated in the House of Representatives.....True or False.

"5. In determining the number of representatives each state should have, the entire population is counted.....True or False.

"6. The Vice-President of the United States is the Speaker of the House of Representatives.....True or False.

"7. Congress meets the first Tuesday after the first Monday in November.....True or False.

"8. The President, being Commander in Chief of the Army, has the power to declare War.....True or False.

"9. The Judges of the Supreme Court are appointed for life, and hold office during good behavior.....True or False.

"10. No bill can become a law without the Presidents signature.....True or False."

These questions do not bring out the past which fills the Constitution and a knowledge of which must be, as Patrick Henry said, our guide to the future.

We should like to give the best set of questions from a country district eighth grade (but the limit on space prevents) because the records of the Commissioner of Education show that only 28 per cent of the pupils ever get as high as that. Over 44 per cent leave school as soon as the laws permit them to work. Only 10.92 per cent graduate from High schools. Only 1.4 per cent graduate from colleges. Therefore the task of making even a half-complete self-governing population must be pushed in the seventh and eighth grades and the high schools.

Pupils who can prepare to answer questions shown are certainly competent to learn about power, the historical misuse of it, and the very good control of it which we have maintained under our Constitution, so good that our method of conferring particular powers on the Legislative Department and denying to it other powers, of protecting the states in their right to control strictly state affairs, and of setting up a Judicial Department to decide when the question is raised by a citizen whether the national government or the state government has stepped beyond the bounds fixed in the Constitution to confine it, was copied by Canada in 1867, by Australia in 1900, by most of the republics to the south of us, and to some degree by peoples in other parts of the world.

It is not above the capacity of youth in the grades named in the law to learn that our Constitution breaks governmental power, which emanates from the people, into three grand Departments, and the historic reasons for that course; to know the twenty-odd grants of power which the people in their constitution make to Congress, why they were granted to the Legislative Department instead of to one or both of the other Departments, and that the Legislative Department possesses no power not so granted to it; to know what powers are carefully denied to Congress (the Legislative Department), and why; to know what rights of the man and his property are placed by the Constitution beyond the power of government to touch; to know what inherent powers the States yielded to the National government when they ratified the Constitution, and that they yielded no others; to know what powers still reside in the States, with which the National government cannot interfere; to know whence all power in the government springs; to understand the structure and operation of the Judicial Department for the prevention of the misuse or usurpation of power; and to know the powers of and the limitations on the Executive Department (the President) which enforces the law of the land.

Pupils have found this a captivating subject, and far easier than Higher Arithmetic, Algebra, Latin and some other studies which they have pursued as a matter of course.

The trouble today is that the Constitution never has been taught to teachers. Consequently, they cannot be expected to teach it to the best advantage. They are not censurable. The normal schools and teachers colleges should give a thorough course in it. In the meanwhile teachers can "study up" with the aid of a good textbook and prepare themselves to carry the class along. Works on civics while perhaps serviceable in the grades below the Seventh, in which the Legislature makes such study permissive, do not go to the core as it should be reached by older students who are shortly to leave school and become forces in society and government. The examination questions illustrate this. These questions support the opinion of a jurist who took a course in civics at a State Normal School and then taught the subject for three years in high schools. His opinion as to the insufficiency of civics for high school students should be highly competent:

"A few years after having been admitted to the Bar I began to realize what a vague idea I had as an instructor in civics of the Constitutional principles of my government and the duties of a citizen to his government. . . . Why these provision were ever placed in the Constitution, what abuses of past governments they were intended to guard against, I could not answer."

Not only are the young people entitled to better instruction than that, but the welfare of the Republic requires it.

In the National Oratorical Contests of the last four years the newspapers, to the humiliation of the lawyer and the teacher, have demonstrated that pupils can be intensely interested in constitutional government and that they are capable of comprehending its principles. In 1927 over 2,000,000 boys and girls in the high schools of the country prepared and delivered orations on various constitutional themes. Over 5,000,000 altogether have done so. In 1928 there will probably be 2,500,000 high school contestants.

The lawyers and the educators should work together to establish a more thorough system of constitutional education in the high schools and in the two grades below, as the law so clearly commands. In each city and county the lawyers should confer with teachers and assist those desiring help. Any lawyer would be glad to "brush up" on the Constitution and conduct a class for the teachers once or twice a week, going over the Constitution clause by clause and explaining the history of each and the service it has done (as illustrated in great decisions) to liberty or property or progress, with special attention to the battles over the use or misuse of power. Some lawyers who were once teachers might be of help now and then in the class room, or at least they could occasionally speak to the classes on some special themes, or they might have weekly "question boxes" for the aid of both pupils and teachers. Much can be accomplished and great enthusiasm worked up in this way.

The law should be strengthened by the insertion of more definite requirements for the teaching of the Constitution as a separate subject in certain schools for a fixed time each year. A knowledge of the Constitution of the United States means a general knowledge of all the State Constitutions, of all Constitutions of the southern republics, and of Canada and Australia—it almost is a universal education in government.

In 1922 the American Bar Association appointed a special committee to look into the lack of teaching in schools and colleges not only, but also the affirmative un-American teaching in some institutions of learning, in some publications, and on the platform. The Committee reported its findings, which were very serious, and stated the conclusion that "the schools of the Nation must save the Nation." Of course. For, as the proverb goes, "Whatsoever you would have appear in the life of a nation must be put into the schools." That Committee was made permanent and it has ever since been working for better constitutional education. Finally, it has planned to co-operate with the Bar Association in each State toward helping educators.

We emphasize strongly that we have only help to offer, and no criticism. No blame attaches to the educator, because he has been left to work his way, and he has labored hard. If criticism were to be distributed the major share might fall to the lawyer, who has not employed to the best advantage for the general welfare his special education in the principles of constitutional government.

But that is past. The future should see thorough education in the principles of the Constitution respecting the practical operation of our government within the limits laid down to hold power in its place and prevent it from striding (as it will always, if it can) over the man, his liberty, and his property.

Since, as the Declaration of Independence says, governments are instituted to secure "certain unalienable rights"

(life, liberty and the pursuit of happiness), and governments derive "their just powers from the consent of the governed," it follows that the very first care of a self-governing people should be to know the philosophy of the system which their progenitors set up and which they are to carry on improved rather than impaired. Every provision in the Bill of Rights, as well as those limiting the power of government in other directions, should be perfectly understood by every youth leaving school. There can be no valid excuse for its being otherwise. Then the mass of people will apprehend the peril of a proposal that, for example, the great State of Illinois abdicate a part of its police power with respect to child labor, a subject on which its conduct has been for over a third of a century all but perfect, and transfer that much of its birthright to a bureau in the national capital.

At least a goodly bulk of the people must know these things if we are to preserve in its integrity the government which has produced the best conditioned people that the world has known.

The length of this report prevents many quotations from the answers of educators whose opinions run parallel with ours and who are desirous of receiving help and improving education in this respect.

A county superintendent writes:

"One of the difficulties which we have today in the way of teaching good citizenship is the improperly trained teacher, who, herself, does not have a correct and concise understanding of the American ideal. This is in no way a reflection on her patriotism. It simply means that she is not well versed in the structure of American government."

That writer deals with one of the controlling conditions with which the Bar believes it is entirely feasible to cope.

A city superintendent recognizes the situation as we see it and refers to a psychological effect which every youth in school has felt and noticed:

"I have come to the conclusion that in most cases the Constitution has been relegated to the back of the history in very small type, which really gives the pupil an impression that it is not very important."

Two recent works on the Constitution, written for popular edification, do not contain the fundamental law at all, even in small type near the back cover.

Another superintendent expresses the hope that a better book is coming for the teaching of the Constitution.

In the light of the facts reviewed, it is not astonishing that more than half of the voters did not go to the polls at the last Presidential election; or that, out of over 1,000,000 women 21 years old and over 1,000,000 men of that age, only 206,000 voted the last judicial election in Cook County, where there is general complaint that the courts are unable to deal with crime. But those who live from the public treasury, as office-holders or as beneficiaries of the "organization" which the office-holders maintain, are unfailing voters.

We recommend that this Committee be authorized to confer with the State Superintendent of Public Instruction to consider what may be done toward securing in the grades mentioned by the Legislature the fullest compliance with its command.

We recommend that lawyers throughout the State attend county meetings of teachers and superintendents and bring to their attention the law of 1921, discuss with them the subject of better instruction in the Constitution, offer their assistance to the teachers, and report to the President of this Association the results of such conferences.

We recommend the adoption of this report and ask that it go to the members of the Association with the request that each local organization consider the suggestions and test their practicability by conference with local educators.

We recommend also that a copy of this report be sent to each county superintendent of schools and to city superintendents.

The newspapers conducting the National Oratorical Contest requested the American Bar Associaion to prepare a short list of books for public libraries because the libraries were found by the public to be able to give but little help. This list of works on our government was prepared, and it might be well to send it to libraries and educators in Illinois.

LEAL W. REESE, Taylorville; BENJAMIN DEBOISE, Springfield; ROLAND D. WINKELMANN, Urbana; WILLIAM R. MOSS, Chicago; HENRY P. CHANDLER, Chicago; HENRY R. RATHBONE, Chicago; LOUIS A. BOWMAN, Chicago; WILLIAM M. ALBERT, Vandalia; WILLIAM D. KNIGHT, Rockford; GEORGE H. WILSON, Quincy; FRANK T. MURRAY, Chicago; WILLIAM S. BENNETT, Chicago; WALTER E. BEEBE, Chicago; THOMAS J. NORTON, Chicago.

LETTERS OF INTEREST TO THE PROFESSION

Book Criticism Criticized

EDITOR, AMERICAN BAR ASSOCIATION JOURNAL:

I have the unpleasant task of criticizing the notice on pages 23 and 24 of the January, 1928, issue of the Journal of the American Bar Association, of which I have long been a member.

The book discussed is "States' Rights and National Prohibition," by Archibald E. Stevenson, the legal proposition stated in which is the tenth amendment, being an amendment to the Constitution as a whole, is an amendment of article five of the Constitution, and accordingly limits that article, the sole source of the power to amend the Constitution.

The item in the Journal is of so controversial a character that I feel sure you will find it hard to make Mr. Stevenson's point out from it, and, while it covers more than a page of the Journal, no attempt is made to discuss it as a legal proposition, all this space being taken up with Anti-Saloon-League propaganda, amongst which is the old piece of it "here was a business which would not obey the law," etc., and the only remedy suggested the destruction of the business, as if that is any thing but a reflection upon the American people in general, and American Lawyers in particular.

If the statement is true, why was not obedience compelled, and is destruction the only remedy the American public or American Lawyers can devise?

Certainly the Lawyer's office is to devise, and take part in carrying out, measures of correction, not destruction.

Baltimore, Feb. 1. J. S. T. WATERS.

Attitude of American Judges to Those Without Counsel

EDITOR, AMERICAN BAR ASSOCIATION JOURNAL:

I have read with interest "An Incident In A London Law Court" by Richard E. Cochran, Esq., of the York, Penn., Bar, as published in the December issue of the Journal.

As the story runs, a very shabbily dressed woman took a seat in the Bar and, after a Barrister had made a motion, arose and addressed the Lord Chief Justice who was presiding, reciting her wrongs in the purest English and dramatically appealing to his Lordship to see that Justice was done her.

Two circumstances, among others, that seem to have profoundly impressed Mr. Cochran, were that this woman should have been permitted to sit in the Bar, and that the Chief Justice replied to her "in the kindliest manner possible," stating that he could not act for her, that he sat as a judge not as an advocate, and giving her many reasons why she needed counsel.

In speaking of the incident to a young barrister who had invited him to attend this session of the court, Mr. Cochran said, "I did not see how it was possible that such a thing could happen in my country, and that if an intruder could get into the Bar in the part of the country in which I live and attempt to address the court, a superserviceable tipstaff would take her by the arm and march her to the door."

Whatever may be true of Mr. Cochran's part of the country, I feel impelled to say that in Massachusetts and, so far as I know, in most any other part of the country the incident he relates, while unusual, would not have been regarded as extraordinary. It would seem to me extraordinary rather, if a person desired to address the court and was not permitted to do so.

"The kindness and respect with which the Lord Chief Justice of England treated one of Great Britain's very humble citizens," I have seen duplicated many times in our own courts.

Persons may not only be admitted within the Bar

to address the Court but may, if they desire, try their own cases.

Two cases in point, of many that I have personally witnessed, come to my mind, and may bear relating: A man having been arrested in Cambridge for being under the influence of liquor and convicted in the lower court, appealed to the Superior Court. He had been represented by counsel at his first trial and concluded that he would dispense with a lawyer before the jury.

Two policemen testified for the state that he was drunk when arrested. He asked each one in turn one question—whether they knew of any place in Cambridge where liquor could be bought. To which each one answered: No. He then submitted his case to the jury in one question: How could I be drunk when these officers whose business it is to know, tell you that there is no place in Cambridge where I could buy a drink? The jury returned a verdict of "Not Guilty."

The second case is an exact parallel in all respects with the case that Mr. Cochran relates but with a different ending.

I entered the motion session of the Superior Court in Boston to find a woman within the Bar addressing the presiding justice. She was appealing to the court to redress her wrongs and was (as a barrister said to Mr. Cochran of the English woman) "a frequenter of the courts and always had some complaint or other to present."

The presiding Justice in the kindliest and most courteous manner possible, replied, that he sat as a judge, that there was nothing he could pass upon, that she very much needed counsel to present her case in proper form before the court.

At this point the cases differ:

In the English case no barrister offered to espouse her case although the Lord Chief Justice "gave many reasons why it was necessary for her to have counsel," and in her address to his Lordship she had expressed the hope that one of the barristers present would do so.

In the American case one of the most distinguished members of the Bar, waiting his turn to address the court, at once arose and volunteered to take the woman's case and left the court room in her company.

As I understand the English practice a barrister does not take any case without a retainer. With us it is different.

The solicitor of the Lord Chief Justice of England is what the solicitude of the Chief Justice of Massachusetts and, I assume, of every other state would be.

I cannot help but feel that Mr. Cochran left a wrong impression on the mind of the young English barrister as to the attitude of our courts of justice toward those who are without counsel.

EDGAR O. ACHORN.

Altamont Springs, Fla., Jan. 16.

Right Conferred by Patent

EDITOR AMERICAN BAR ASSOCIATION JOURNAL:

In the December number of the JOURNAL, Mr. J. F. Wilson of Port Huron has a letter referring to my article on "Patent Pools," etc., in which he suggests that it might have been of interest had the article discussed the language of the letters patent as issued by the United States.

Mr. Wilson says: "Whether or not the patent can confer the right 'to make, use and vend' the thing invented . . . in any event the *language* does so."

The *language* of the grant does indeed seem to convey the idea that what is granted is the positive right to do these things. But the whole emphasis and virtue of the grant is on the word *"exclusive."* This is the word used in the Constitutional provision delegating to the Federal government the authority to grant patents for inventions; and the same word is repeated in the statute (Sec. 4884 R. S.) prescribing the terms of the grant. In the former instance the word is coupled with the limitation "for *limited* times"; whereas, in the latter, Congress has fixed the time limit at seventeen years. This specific time limit is purely arbitrary; it was formerly only fourteen years, but with the privilege of extension for seven years more on a required showing of cause.

There are certain logical consequences that preclude the grant being taken as a positive grant of the right to make, use and vend. One is: When the grant has expired, has the grantee then no longer the right to make, use and vend? If he hasn't, then he alone has not the right that everyone else has, since, as well known, the patented invention becomes free to the public upon expiration of the patent. That is, the man who created the invention and to whom all its advantages and benefits are due would, on the cessation of his supposedly granted right to make, use and vend it, be the only one in the country who had no right to do so, such right in him having expired. Or, suppose that for sound reasons the Patent Office refuses to grant a patent so that the inventor obtains no grant of the supposedly positive right to make, use or vend his invention. The invention then, not being patented, everyone may make, use and vend it,—except the luckless inventor himself who has been definitely refused the supposed grant of the positive right to do so. Furthermore, this luckless inventor has had to pay out at least $20 in cash to the Patent Office to have his patent application placed on file and examined,—and refused; whereas everyone else has paid nothing for their undoubted right to use, make or vend an unpatented invention.

Hence the numerous decisions of the Supreme Court (some of which I think were cited in my article) to the effect that *all* a patentee gets by virtue of his patent is the *negative* right to *exclude* others for a limited time from making, using or vending the patented invention, are not only law but incontrovertible logic. The inventor's right to make, use and vend his invention is not affected in the least by his applying for or not applying for, obtaining or not obtaining, a patent. His right to invent, or to make use or vend what he has invented he has inherited from the birth of the human race when his ancestor invented the first sling, or the first spear, or the original bow and arrow. These rights are at least as old as 10,000 or 5,000 B. C., probably millenniums older, and have never been surrendered,—certainly not to a government of such specifically limited and delegated authority as the Federal government.

The case of *In re* Brosnahan, Jr., by a Justice of the Supreme Court sitting in the Eighth Circuit (18 Fed. 62) is too infreqently noted, and is much in point. The question was on writ of *habeas corpus*.

"Has the prisoner, then, a right to sell the article thus patented, notwithstanding the statute of Missouri which forbids such sale? . . .

"It is to be observed that no constitutional or statutory provision of the United States was, or ever has been, necessary to the right of any person to make an invention, discovery or machine, or to use it when made, or to sell it to someone else. Such right has always existed, and would exist now if all patent laws were repealed."

The "supreme law of the land" (i. e., the patent laws made pursuant to the Constitution) was thus not transgressed by the statute of Missouri forbidding the sale of the patented article: the prisoner was remanded to custody. The patent did not grant the right to make and sell the patented article, but only to exclude others from doing so.

H. C. WORKMAN.

Washington, D. C. Jan. 13.

A Matter of Emphasis

EDITOR AMERICAN BAR ASSOCIATION JOURNAL:

Referring to letter of Mr. J. F. Wilson in your issue of December, 1927, citing the language of the grant in letters patent for an invention as apparently contradicting the statement of the well recognized effect of a patent monopoly contained in Mr. Workman's previously published article, may I point out that the variance in reading is a matter of variation in emphasis.

Mr. Wilson reads the grant "the exclusive *right* to make, use," etc.

The Courts read it "the *exclusive* right to make, use," etc.

That is to say, the right granted is simply one of *exclusion*, i. e., the right to *exclude* others from making, using, etc.

At common law the inventor has the right to "make, use and vend" any embodiment of his invention. His patent adds nothing to that. But the public, at common law, also have an equal right to do it if, and when, they get the knowledge of the new thing from the inventor, or independently originate it. The patent law takes this right away from the public for seventeen years. It suspends their common law rights for that period, if the patentee cares to exert his power by suit to enjoin them from exercising these common law rights during that period—if his patent is properly drawn.

Of course, much popular and some judicial misconception would have been obviated if the patent statute had been phrased "the right to exclude others from making, using and vending," but for some reason, probably historical, the other form of language was used.

New York, Jan. 4. A. PARKER-SMITH.

Kansas

Kansas Rejects Bar Incorporation

Incorporation of the State Bar, after the manner now obtaining in Alabama, California and several other states, was rejected at the recent annual meeting of the Kansas State Bar Association, held at Wichita. A vote to repeal the state primary law and the first report of the Judicial Council, presented by Secretary Charles L. Hunt, were other interesting features of the meeting.

Able and informative addresses were made by President Silas H. Strawn, of the American Bar Association, who spoke of the equipment which the lawyer of today needs in order to discharge his duty to his clients and the public; by President of the Kansas Bar Association, Hon. Robert L. Stone, of Topeka, who answered effectively the current and traditional criticisms of the legal profession; Edgar C. Bennet, who spoke on "The Kansas Baumes Laws"; Donald W. Stewart, whose subject was "Universal Conscription"; by J. D. M. Hamilton on "Malpractice from the Defendant's Viewpoint"; by Judge J. T. Richardson of Emporia on "The Jury—Means of Improving Its Efficiency"; by James A. McDermott on "Triers of Fact in Civil Cases."

The following officers were elected for the ensuing year: F. Dumont Smith, Hutchinson, President; Charles D. Shukers, Independence, Vice-President; Eugene Stanley, Wichita, Secretary; James G. Norton, Wichita, Treasurer. The next meeting will be held in Hutchinson.

Louisiana

Louisiana Bar's New Officers

At the annual business meeting of the Louisiana Bar Association held in the Louisiana State Supreme Court chamber in November last, Mr. Burt W. Henry was elected president, succeeding Hon. Sidney L. Herold, whose term had expired. Mr. Henry was elected unanimously, Secretary-Treasurer William W. Young being instructed to cast the ballot for the entire association.

The following were elected vice-presidents, there being but one nomination for each office: First vice-president of the First District, Charles F. Fletchinger of New Orleans; second vice-president, J. B. Barksdale of Shreveport; third vice-president, R. F. White of Alexandria; fourth vice-president, Allan Sholars of Monroe; fifth vice-president, Charles C. Bird of Baton Rouge; sixth vice-president, L. P. Caillouet of Thibodaux.

William W. Young was re-elected to the office of secretary-treasurer.

Nevada

Nevada Bar Decides to Incorporate

The Nevada Bar Association, which was organized in 1912, resolved at its recent session held in Reno January 20-21st, on occasion of its regular annual meeting, to incorporate the State Bar of Nevada as a self-governing institution, and as a public corporation by a special act of the legislature. The bill for the incorporating has been drawn and presented to the legislature, and has passed both houses, and is now in the hands of the Governor, and it is expected it will be signed.

The bill is along the lines of the California Incorporating Act of the California State Bar, except as to necessary changes. There is a Board of Nine Governors, a president, two vice-presidents, secretary and treasurer. Membership in the State Bar will be compulsory in that the act provides that every practicing lawyer in the state is automatically made a member of the Incorporated State Bar, and subject to the provisions of the act. Non-membership means loss of the right to practice law in Nevada. We have about three hundred lawyers who will be entitled to become members of the incorporated bar. The annual dues are $3 a year and unless they are paid the member is dropped subject, however, to reinstatement.

A fairly complete canvass of the entire bar membership of the state was made and from this canvass I would say at least ninety per cent of the members are in favor of the incorporation of the bar; and some refused to commit themselves for want of information, and some are opposed on the ground of the expense. The Board of Governors will be given ample power to discipline members and subject to approval by the Supreme Court, to disbar for unprofessional conduct, suspend, etc.

A possible constitutional objection to incorporating the State Bar under a special act is our main concern. It is believed that the objection will not be held good.

My term of office expired at the last annual meeting and A. L. Scott, State Senator, who resides at Pioche, in this state, was elected president of the Nevada Bar Association for the ensuing year. Melvin E. Jepson was reelected secretary. George S. Green of Reno was elected vice-president. E. L. Williams of Reno was elected treasurer. This was a reelection of Williams. It was also a reelection of Mr. Green for vice-president, except for the past year he was second vice-president, while now he is first vice-president.

If the Incorporation Act is approved by the Governor and put into effect, it is believed that the above officers will be elected as the first officers of the Incorporated Bar.

H. R. Cooke.

New York

New York State Bar Officers

The following officers were elected for the ensuing term by the New York State Bar Association at its fifty-first annual meeting, held in New York City: President, William C. Breed, New York; Vice-Presidents: Judge Joseph Rosch, Liberty; Samuel Greenbaum, New York; David F. Manning, Brooklyn; Erskine C. Rogers, Hudson Falls; George H. Bond, Syracuse; Frederick Collin, Elmira; Eugene Van Voorhis, Rochester; Almon Lyttle, Buffalo; J. Addison Young, New Rochelle; Secretary, Charles W. Walton, Albany; Treasurer, A. G. Bartholomew, Buffalo.

Joseph Henry Beale, of Harvard University, delivered the annual address, on "Negligence and the Conflict of Laws."

An address by Governor Alfred E. Smith advocating state ownership of water power, elimination of some minor counties, and a revision of state government to give communities increased powers in self-rule, was one of the features of the annual banquet Saturday.

Ohio

Midwinter Meeting of Ohio Bar

The Midwinter Meeting of the Ohio State Bar Association was called to order by President Charles B. Hunt, of Coshocton, in the Hall of Mirrors, Hotel Deshler-Wallick, Columbus, Ohio, Thursday morning, January 26th, 1928.

Hon. Boyd B. Haddox, President of the Columbus Bar Association, extended to the Ohio State Bar Association a welcome on behalf of the local association, the response on behalf of the Ohio State Bar Association being made by Hon. Simeon M. Johnson of Cincinnati, Past President.

Chairman George W. Spooner of Cleveland presented the report of the Committee on Admissions, recommending the applications of 335 lawyers, who were elected to membership in the Ohio State Bar Association.

Hon. William G. Pickrel of Dayton presented the report of the Executive Committee, which covered the following points, among others: Appointment of Committees to work in conjunction with Committee for the Revision of the Criminal Laws of Ohio, and a Committee of Probate Judges to consider Revision of Probate Laws; recommendation of amendment to Constitution reducing to $4.00 dues for newly admitted lawyers for first year of membership in Association, which amendment was adopted by the Midwinter Meeting; requirements that members in arrears two years for dues be dropped from roll; and steps which have been taken to secure filing of opinions of Courts of Appeals with Secretary of the Association.

The Report of the Committee on Judicial Administration and Legal Reform was presented by Chairman William J. Geer of Galion. The recommendation of the Committee that consideration of the subject of "Abolition of the Code of Civil Procedure and the Establishment of the Rule-Making Power of the Courts" be deferred until disposition of Senate Bill S. 477, pending in the Senate of the United States, or until the subject be presented at a future meeting of the Association, was approved. The recommendation that legislation be endorsed permitting representation of claimants and employers by attorneys before the Industrial Commission of Ohio, and providing for notice to such attorneys, and for payment of attorneys

rendering service upon rehearings before the Commission, was approved. The recommendation that filing fees in the Supreme Court of Ohio in no case exceed $5.00, was approved. The recommendation relative to punishment by notaries for contempt was amended to provide that the bills prepared to cover this matter be submitted to the Association at its next Annual Meeting.

The recommendation of the Committee that no legislation be endorsed upon the matter of the appropriation of law practice by non-attorneys and that a Special Committee be named to confer with the officers of the State Bankers' Association with reference to this matter, was approved, with instructions to report at the next Annual Meeting. The recommendation that Section 1698, General Code, be supplemented by a section to be known as Section 1698-a, making it illegal for any attorney to pay to any claimant for damages any sum of money, during pendency of action, making the contract for fees in such matters void where such payments have been made, and subjecting the violator to fine and imprisonment, was recommended to the Committee, with instructions to report a revised bill at the next Annual Meeting.

Hon. Robert M. Toms of Detroit, Prosecuting Attorney of Wayne County, Michigan, addressed the Association upon the subject "The Michigan Code of Criminal Procedure."

Judge Thomas H. Darby, of Cincinnati, Chairman of the Special Committee on Reform of Criminal Code, presented the report of the Committee stating that further investigation would be made and report had at the next Annual Meeting.

Executive Committeeman Pickrel of Dayton presented the budget of income and expense for the ensuing year which was adopted. Mr. Pickrel moved that a committee of nine members be appointed by the President of this Association to work and co-operate with a similar committee from the Probate Judges' Association of Ohio toward a revision and codification of the probate laws of Ohio, which motion was carried.

Chairman James A. White of Columbus presented the Report of the Special Committee on Inferior Courts, stating that four possible plans had been submitted to the Committee: 1. The amendment of existing laws to permit the Probate and Common Pleas Courts to take over the jurisdiction; 2. A rural court, to travel over the county at stated intervals; 3. A rural court, with a presiding judge, the county to be divided into magisterial districts, presided over by magistrates; 4. A rural court, with associate judges, and magisterial districts. The Chairman moved that the Association resolve itself into a Committee of the Whole for the purpose of discussing this subject, which motion prevailed, and a full discussion was had as to the evils to be corrected and the various suggested methods of correcting them. The report of the Committee was adopted and the Committee continued.

Hon. Carrington T. Marshall, Chief Justice of the Supreme Court of Ohio, administered the oath to 114 newly admitted members of the bar, who were addressed by Hon. John A. Elden of the Executive Committee of the Ohio State Bar Association, Hon. Florence A. Allen and Hon. Robert H. Day, Judges of the Supreme Court.

Hon. William Marshall Bullitt, Louisville, Kentucky, former Solicitor-General of the United States, addressed the Association upon "Death by Accidental Means."

The meeting of the Judicial Section was presided over by Chairman Lewis B. Houck of Mt. Vernon, Judge of the Court of Appeals.

Chief Justice Carrington T. Marshall of the Supreme Court of Ohio, addressed the Section on "Ohio's Highest Court"; Hon. John J. Sullivan, Chief Justice of the Court of Appeals of Ohio, on the subject, "The Functions of the Reviewing Court"; and Hon. Abram W. Agler, Judge of the Court of Common Pleas of Stark County, upon "The Problems of a Trial Judge."

Hon. Province M. Pogue of Cincinnati, presented the Report of the Special Committee on Corporation Law, giving in detail the work of the Committee in consideration of proposed amendments to the Corporation Code enacted by the last session of the General Assembly, and stating that a report, with recommendations, would be submitted by the Committee at the Annual Meeting.

At the Annual Dinner, Hon. Charles B. Hunt, President of the Ohio State Bar Association, introduced the toastmaster of the evening, Hon. A. R. Johnson of Ironton. Addresses were made by Hon. William S. Dalzell of Pitts-

burgh, Pennsylvania, President of the Pennsylvania Bar Association, who spoke upon "The Lawyer's Obligation to the Public," and by Hon. Max P. Goodman of Cleveland, President of the Cuyahoga County Bar Association, on the subject "Mass Product versus Justice."

At the concluding session of the Mid-winter Meeting Saturday morning, Hon. Simeon J. Johnson of Cincinnati, presented a resolution with reference to the support of the United States of the Permanent Court of International Justice at The Hague, consideration of which, on motion, was deferred until the Annual Meeting.

The Conference of Bar Association Delegates was presided over by Chairman George B. Harris of Cleveland. Hon. Herbert F. Goodrich, a member of the Faculty of the University of Michigan Law School, Secretary of the Michigan Bar Association and a member of the Staff of the American Law Institute, addressed the Conference upon the work of the American Law Institute in the restatement of the common law.

Miscellaneous

Dates for 1928 Bar Association Meetings

The Kentucky State Bar Association will hold its 1928 annual meeting in Lexington, according to a decision of the Executive Committee.

The South Dakota Bar Association will hold its next annual meeting at Yankton at a date to be later determined.

The Oregon State Bar Association will meet this year at Eugene, on Sept. 28 and 29.

The 30th annual meeting of the North Carolina Bar Association will be held at Grove Park Inn, Asheville, N. C., June 28-30, 1928. On the evening of June 29 President Silas H. Strawn of the American Bar Association will deliver an address.

Miscellaneous

At a meeting of the Mercer County (Pennsylvania) Bar Association, held recently, the following officers were elected: President, W. C. Leffingwell, Sharon; Vice-President, Harry L. Keck, Greenville; Secretary, Joseph Broscoe, Farrell; Treasurer, T. A. Sampson, Mercer; trustees, Virgil Johnson and W. G. Barker, of Mercer, W. C. Pettitt of Greenville, L. J. Wiesen and E. V. Buckley of Sharon.

At the annual meeting of the Clark County (Ohio) Bar Association, held January 14th, M. T. Burnham was re-elected President; other officers re-elected were: Vice-President, former Judge George W. Tehan; Secretary, Harry W. Snodgrass; Treasurer, George Raup; Law Librarian, Miss Lottie Cross.

The Pike County (Mississippi) Bar Association, at its annual meeting in December, re-elected the following officers: President, Judge J. H. Price; Vice-President, Judge W. B. Mixon; Secretary-Treasurer, Judge Justin J. Cassidy.

Beauford H. Jester was re-elected President of the Navarro County (Texas) Bar Association at its recent annual banquet. Other officers elected were as follows: Vice-President, Wayne R. Howell; Secretary, W. W. Harris; Treasurer, Warren Hicks.

At the annual meeting of the Lackawanna County (Pennsylvania) Bar Association, held in January, William J. Fitzgerald was elected President; Clarence Balentine was made Vice-President, Philip V. Mattes, re-elected Secretary and David J. Reedy member of the Executive Committee.

The Hibbing (Minnesota) Bar Association, at its first annual meeting held in January, elected Victor H. Johnson President, Helmer A. Frankson, Secretary-Treasurer, and Robert Stratton, Honorary President of the Association.

Freeman E. Miller was re-elected President of the Payne County (Oklahoma) Bar Association, at its recent annual meeting. Other officers elected were: L. G. Lewis, Vice-President Raymond H. Moore, Treasurer; and Henry W. Hoel, Secretary.

The Stoddard County (Missouri) Bar Association, at its annual meeting on December 15th, elected the following officers: President, George Munger; Secretary-Treasurer, H. C. Hyslop, and Vice-President, C. A. Powell.

At the recent annual banquet of the Creek County (Oklahoma) Bar Association, the following officers were elected: President, J. E. Thrift; Secretary, George Jennings.

Charlton B. Thompson, was named President of the Kenton County (Kentucky) Bar Association, at its annual banquet, held in December. Other officers elected were: Vice-President, Charles S. Furber; Secretary, F. Douglass Curry; Treasurer, Oscar H. Roetken.

At the annual meeting and banquet of the Crawford County (Illinois) Bar Association, held recently, Hon. J. B. Crowley was unanimously chosen President, and Goldoni McCarty was re-elected Secretary-Treasurer.

The Dallas (Texas) Bar Association, at a luncheon on January 7th, elected the following officers for 1928: Carl B. Callaway, President; Joseph Weldon Bailey, Jr., 1st Vice-President; John A. Erhard, 2nd Vice-President; R. G. Storey, 3rd Vice-President, and W. L. Moore (re-elected), Secretary-Treasurer.

At a meeting held by the Fayette County (Kentucky) Bar Association, in January, J. Pelham Johnston, was chosen President, by unanimous vote of the members. Other officers elected were: R. J. Colbert, 1st Vice-President; J. Keene Daingerfield, 2nd Vice-President; A. M. Hall, Secretary, and Frank L. McCarthy, Treasurer.

Marion Rushton was elected President of the Montgomery (Alabama) Bar Association, at its annual meeting held January 7th; Henry N. Hughes, clerk of the Circuit Court, was elected Secretary-Treasurer for the sixteenth consecutive time.

The Peoria (Illinois) Bar Association, at a meeting in January, elected E. Bentley Hamilton as President. E. V. Champion was named 1st Vice-President; Robert P. Jack, 2nd Vice-President; and E. L. Covey, Secretary-Treasurer.

At a recent meeting of the Lake County (Illinois) Bar Association, Attorney Okel Fuqua, of Waukegan, was elected President; City Attorney Max L. Przyborski, of North Chicago, was elected Vice-President, and Harold J. Hansen, of Waukegan, Secretary-Treasurer. Circuit Judge Claire C. Edwards and Probate Judge Martin C. Decker were named executive committee members.

The Twelfth annual convention of the Probate Judges Association of Missouri, held at St. Joseph, in October, elected the following officers: Judge Otis T. Whaley, of Albany, as President, Judge R. S. Lamar, of Calloway County, Vice-President, and Judge Martha Spohrer of Warrenton (re-elected), Secretary-Treasurer.

The Snohomish County (Washington) Bar Association at a recent meeting, elected W. P. Bell, of Everett, as President. Other officers elected included Noah Shakespeare, Vice-President; S. J. Brooks, Secretary, and Dan Locke, Treasurer.

At the annual meeting of the Williamson County (Illinois) Bar Association, held in November, the following new officers were chosen: President, George R. Stone; 1st Vice-President, Robert T. Cook; 2nd Vice-President, George Crichton; Secretary, John Hay; Treasurer, August L. Fowler.

The Bar of the 21st Judicial District (Iowa) by acclamation elected E. C. Roach, its President, at a recent meeting. Simon Fisher was elected to succeed Mr. Roach as Vice-President; S. E. Bigelow, of Sheldon, was elected Secretary-Treasurer.

At a meeting of the Howard County (Indiana) Bar Association, in December, John B. Joyce was elected President of the organization for the ensuing year. Lloyd McClure was elected Vice-President, and George G. Shenk, Secretary-Treasurer.

The Sioux City (Iowa) Bar Association, at its annual meeting in November, elected Albert G. Kass, president.

At the annual meeting of the Montgomery County (Illinois) Bar Association, held January 20th, the following officers were elected: President, Judge John L. Dryer, of Hillsboro; Vice-President, Joseph M. Baker, Hillsboro;

Secretary, George P. O'Brien, of Litchfield.

Mr. T. E. Munson was re-elected President of the 13th Judicial Bar Association (Colorado), at its annual convention in January. Other officers chosen were: Corbin E. Robison, Vice-President, and M. C. Leh, Secretary-Treasurer.

The Rock Island County (Illinois) Bar Association, at a meeting in January, re-elected William R. Moore, of Moline, to his fifth consecutive term as President of the organization. Other officers chosen were: Albert Huber, of Rock Island, Vice-President; Francis C. King, East Moline, Secretary.

At the annual banquet of the Mahaska County (Iowa) Bar Association, held in December, the following officers were elected: T. R. Wilkie, President; J. C. Eichhorn, Vice-President, and Blanchard W. Preston, Secretary-Treasurer.

The Birmingham (Alabama) Bar Association, at its recent meeting, elected A. Leo Oberdorfer, of Birmingham, President; Forney Johnston was elected Vice-President. The following executive committee was named: White Gibson, W. H. Wolverton, R. B. Thompson, John Stone and Crampton Harris. Shuford Smyer was elected Secretary.

The Fulton County (Illinois) Bar Association, at its annual meeting, recently held, elected the following officers: President, Justice Floyd E. Thompson; Vice-President, J. W. Gordon; Secretary, P. E. Elting; Treasurer, E. P. Field.

At the annual meeting of the Madison County (Indiana) Bar Association, held in January, the following officers were re-elected for another year: President, Charles T. Sansberry; Vice-President, Conrad S. Arnkens; Secretary-Treasurer, P. B. O'Neill.

W. B. Alexander was re-elected President of the Jefferson County (Arkansas) Bar Association at its annual meeting recently held. Other officers elected were: Harry T. Wooldridge, Vice-President, and A. R. Cooper (re-elected), Secretary-Treasurer.

Following the annual banquet of the Clay County (Minnesota) Bar Association, the following officers were elected: W. George Hammett, President; N. I. Johnson, Vice-President, Edgar Sharp, Treasurer. E. J. Morton was re-elected Secretary.

The Winnebago County (Illinois) Bar Association, at its meeting in January, elected the following officers: Stanton A. Hyer, President; B. A. Knight, 1st Vice-President, and John Goembel, 2nd Vice-President. E. E. Fell was named Treasurer; John D. Snively, Secretary, and D. D. Madden and R. K. Welsh, Trustees.

James Chamberlain was chosen President of the Scott County (Iowa) Bar Association at the annual meeting January 3rd. Other officers chosen were: Caessler Golder, Vice-President, C. M. Severin, Secretary. Harold Hoersch was re-elected Treasurer.

At a banquet and meeting of the Lincoln County (Oklahoma) Bar Association, held on January 9th, the following officers were selected: W. C. Erwin, President; Walter G. Wilson, Secretary.

The Pierce-St. Croix Counties (Wisconsin) Bar Association at its 20th annual meeting, recently held in St. Paul, elected J. H. Grimm, of River Falls, President; George A. Oakes, New Richmond, was elected Secretary for the twentieth time.

County Judge John Alexander was chosen President of the Schenectady County (New York) Bar Association, at its meeting held in January. Other officers chosen were as follows: Vice-President, J. Teller Schoolcraft; Secretary, Kelsie D. Mead; Treasurer, Cyrus W. Briggs; directors, Charles G. Fryer and W. W. Wemple, Sr.

At a recent meeting of the Osage County (Oklahoma) Bar Association, the following officers were elected: Charles R .Gray, President; Robert Stuart, Vice-President; R. A. Barney, Secretary-Treasurer.

The Boone County (Missouri) Bar Association at its meeting on January 23, re-elected the following officers: Arthur Bruxton, President; A. R. Troxell, Secretary, and B. G. Clark, Vice-President.

Henry Rector was elected President of the Bar Association of El Dorado (Arkansas), at its annual election meeting in December. H. S. Yocum was chosen Vice-President; J. Hugh Wharton, Secretary-Treasurer, and Tom Marlin, Sergeant-at-Arms.

At its annual meeting on January 4, the Southwestern (Kansas) Bar Association elected Judge C. L. Light, of Liberal, President; I. T. Botts, of Coldwater, Vice-President, and John C. King, of Liberal (re-elected), Secretary-Treasurer.

The Tri-County (Wisconsin) Bar Association, at its meeting in Vaudreuil, in October, elected the following officers: President, S. C. Gilman; Vice-President, Judge H. A. Anderson; Secretary, E. E. Barlow.

On Saturday, January 28th, at St. Paul, Dean Robert M. Hutchins of Yale Law School, delivered before the Ramsey County Bar Association, one of the most interesting, entertaining and altogether delightful addresses we have had, his subject being "Legal Education."

Hon. Royal A. Stone, Justice of the Minnesota Supreme Court, presided. Hon. Oscar Hallam, a former member of the Court, presented a Resolution on the death of Hon. Albert F. Pratt, Attorney-General of the State of Minnesota. The speakers included Dean Everett Fraser of the University of Minnesota Law School, E. H. Nicholas, Esq., of the Fairmount, Minnesota Bar, Frederick H. Stinchfield, Esq., President of the Minnesota State Bar Association, Thomas C. Daggett, Esq., Vice-President. There were a number of judges of the U. S. District Court, Minnesota Supreme Court and Ramsey County District Court present.

On January 10th, 1928, William A. Riner, Judge of the First Judicial District, Wyoming, was appointed by Governor Frank Emerson to be Associate Justice of the Supreme Court, to fill the vacancy caused by the death of Honorable Charles N. Potter, who died on December 20, 1927.

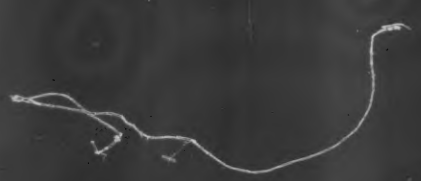
On the same date, Clyde M. Watts, Assistant United States Attorney for Wyoming, was appointed District Judge of the First Judicial District, to succeed Judge William A. Riner, who resigned.

Both appointments are good until the first Monday in January, 1929, and will require each of the above-named judges to be candidates for re-election in the November, 1928, election.

SPECIAL NOTICE

News items of interest, relative to the plans and programs of Bar Associations, State and local, are welcomed by the Board of Editors and will be inserted in this department.

Address all communications to AMERICAN BAR ASSOCIATION JOURNAL, 209 S. La Salle St., Chicago.



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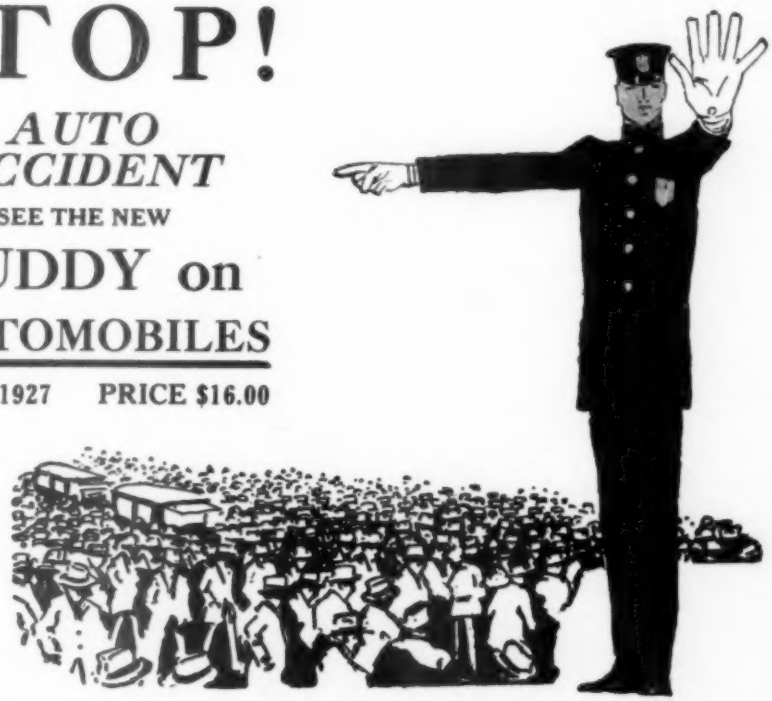

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5. Statutory regulation of motor vehicles.
6. Municipal regulations.
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8. Licensing and registration.
9. Public carriage for hire, jitneys, taxicabs, etc.
10. Private hire of motor vehicles.
11. Garages, garagekeepers, filling stations, etc.
12. Chauffeurs.
13. Miscellaneous subjects of regulation.
14. Law of road.
15. Negligence in operation of motor vehicles in general
16. Speed and control.
17. Equipment and condition of motor vehicles.
18. Collisions with other vehicles.
19. Duty to avoid injury to pedestrians.
20. Duty of pedestrian to avoid injury.
21. Miscellaneous travelers, cyclists, animals in highway.
22. Frightening horses.
23. Railroad crossings.
24. Collision with street cars.
25. Liability for act of chauffeur; master and servant; family cars.
26. Guests and passengers.
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